H. A. Alexander

In the Supreme Court of Georgia

OCTOBER TERM, 1913

LEO M. FRANK, *Plaintiff in Error,* *vs.* STATE OF GEORGIA, *Defendant in Error*	**No. 18.** In Error from Fulton Superior Court. CONVICTION OF MURDER

MOTION FOR NEW TRIAL.
AMENDED MOTION FOR NEW TRIAL.
CHARGE OF THE COURT.

ATTORNEYS:
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ORIGINAL MOTION FOR NEW TRIAL

STATE OF GEORGIA
vs.
LEO M. FRANK
CONVICTION OF MURDER
IN FULTON SUPERIOR COURT.

MOTION FOR NEW TRIAL.

And now comes the defendant in the above stated case and moves the court for a new trial upon the grounds following, to-wit:

1. The verdict is contrary to the evidence.
2. The verdict is contrary to the law.
3. The verdict is against the weight of the evidence.
4. The court, over the objection of the defendant, heard evidence of other transactions and tending to establish other crimes and offenses, wholly separate and distinct from the charge in the Bill of Indictment, to the injury and prejudice of the defendant.

Wherefore, for these and other good grounds to be urged upon the hearing, the defendant, Leo M. Frank, moves that said verdict be set aside and a new trial granted.

REUBEN R. ARNOLD,
L. Z. ROSSER,
HERBERT J. HAAS,
Attorneys for Leo M. Frank, Movant.

Read and considered. Let the foregoing motion for new trial be filed and let a copy thereof be served upon the Solicitor General. It is ordered that the State show cause before me on the fourth day of October 1913, at my Chambers, Thrower Building, Atlanta, Ga., why the verdict should not be set aside and a new trial granted. In the meantime, and until after this motion may be heard, it is ordered that the movant have the right to prepare and have approved and filed a proper brief of the evidence in said case; and that should said motion be postponed, that such right to prepare and have approved and file such brief of the evidence shall exist and remain in the movant until such time as the motion may be finally heard. In the meantime let the execution of the court's sentence be suspended. It is further ordered that until such time as this motion may be heard and decided, that the movant have full leave to amend this motion for new trial.

This 26th day of August, 1913.

L. S. ROAN,
Judge S. C. Stone Mountain Circuit,
Presiding.

GEORGIA, FULTON COUNTY:

Service acknowledged. Copy received. All other and further service waived.

This Aug. 27, 1913.

F. A. HOOPER,
HUGH M. DORSEY,
E. A. STEPHENS,
Solicitor General, Fulton County, Georgia.

We further agree to the order within giving time to prepare and file a legal brief of the evidence. Aug. 27, 1913.

HUGH M. DORSEY,
Solicitor general.

AMENDED MOTION FOR NEW TRIAL.

GEORGIA, FULTON COUNTY.	No.
State of Georgia, vs. Leo M. Frank.	Fulton Superior Court, July Term, 1913.

And now comes the defendant in the above stated cause, Leo M. Frank, and amends his motion for new trial heretofore filed in this case, and says:

That the verdict in the above stated case should be set aside and a new trial granted for the following reasons, to-wit:

1. Because the Court erred in permitting the solicitor to prove by the witness, Lee, that the detective Black talked to him, the witness, longer and asked him more questions at the police station than did Mr. Frank the day when he talked to the witness Lee at twelve (12) o'clock at night on April 29th.

At the request of Black and Scott, the detectives, Frank was induced to have an interview with Lee, the witness, for the purpose of eliciting information from him. The solicitor contended that Frank made no effort to find out anything from Lee, and to that end, sought to show and was permitted to prove by Lee that Black talked longer to him than did Frank at the time stated.

The defendant, then and there at the trial, objected to such evidence upon the ground that it was irrelevant, immaterial, and was a mere conclusion of the witness. The Court admitted the evidence, over such objections, and in doing so erred, because said evidence was unwarranted, immaterial and a mere conclusion of the witness and injurious to the defendant.

2. Because the Court erred in permitting, over objections the witness Lee to testify that Frank, on April 29th, when alone with him at the station house, talked to him a shorter time than did Mr. Arnold, one of Frank's attorneys, when he interviewed the witness just before the trial.

The detectives had induced Frank to talk to Lee alone on April 29th at the station house for the purpose of inducing Lee to talk. Mr. Arnold, in the presence of Lee's attorney, and the jailer, had interviewed Lee just before the present trial.

The solicitor, over the objections of Frank's attorneys that the evidence offered was immaterial, irrelevant, and the expression of an opinion, was permitted by introducing said evidence to draw a comparison of the time occupied by Frank and Arnold to their respective interviews, and, in doing so, the Court erred because the evidence offered was immaterial, irrelevant and the expression of an opinion.

3. Because the Court permitted the solicitor over the objection of defendant made at the time the evidence was offered that the same was irrelevant and immaterial, to show by the witness J. N. Starnes that the witness Lee, the morning the body was found, while in the office of the pencil factory and when under arrest was composed. Said evidence was objected to as illegal, unwarranted and hurtful to the defendant and movant now says that its admission was error for the same reasons.

This evidence was hurtful, because used by the solicitor in his address to the jury in contrasting the deportment of Frank, who was claimed to be nervous and excited.

4. Because the Court erred in permitting the witness Starnes, over objection of the defendant, made when the evidence was offered, because it was a conclusion, to say that his conversation with Frank over the telephone the morning of the finding of the body, was guarded—that he was guarded as to what he said.

This evidence was objected to as unwarranted and a conclusion, and movant here assigns its admission as error for the same reasons.

Movant contends this was hurtful to the defendant, and there was a dispute as to what Starnes said to Frank in that conversation, and the solicitor contended that Frank's words and conduct in connection with that conversation was evidence of his guilt. Starnes' statement that he was guarded in that conversation as to what he said, tended to impress the jury that he was accurate in his memory as to the words of the conversation.

5. Because the Court admitted what purported to be a picture of the second or office floor, the street floor and basement of the factory. On this picture was traced red dotted lines extending from the back of the office floor, down the elevator to the basement, and down the basement near the back of the building. There were, also, Greek crosses on the picture. It was con-

ceded by the State that these dotted lines and crosses were no part of nor represented any part of the building but were put in the picture for the purpose of illustrating the theory of the State, as showing where the body was found and where it was carried.

The admission of the picture in evidence, with the lines and crosses thereon, was, when offered, objected to because, as movant contends, it was argumentative, representing and illustrating the State's view of the case by means of red lines and crosses, which was no part of, nor illustrated any part of the building.

The admission of said diagram and drawing was error for the same reasons as set out in the above objections, the objection being that the same wsa illegal and prejudicial, and movant assigns error in their admission for the same reason.

6. Because the Court, over objection made when the evidence was offered, that the same was a conclusion, permitted the witness Black to testify that in a conversation had with Frank months before the tragedy that he didn't remember anything that caused him to believe that Frank was nervous, the hurtful purpose being to compare his then conduct with that after the tragedy.

This evidence here objected to was illegal, a conclusion, and prejudicial, and movant says its admission was error for said reasons.

7. Because the Court, over objection made when the evidence was offered that the same was irrelevant, permitted the witness Black to testify that Frank had counsel, Messrs. Rosser and Haas about eight or eight thirty o'clock Monday morning while Frank was in the station house, brought there by detectives Black and Haslett.

Movant contends the employment of counsel, under the circumstances was no evidence of guilt; but the Court's conduct in submitting the fact to the jury was greatly hurtful to the defense.

Said evidence was illegal, irrelevant and prejudicial and its admission over objection is here assigned as error for said reasons.

8. Because the Court refused to permit the witness Black to testify on cross-examination that when he found a bloody shirt in the bottom of a barrel in Newt Lee's house, that he carried the shirt to the station house, showed it to Lee, and, when Lee was asked by the witness if the shirt was his, the solicitor objected that the witness should not be allowed to answer the question: "Did he (Lee) say that the shirt was his?"

The Court would not permit the witness to give Lee's answer that the shirt was his.

This answer of Lee's was, as movant contends, part of the res gestae of the shirt transaction, and Lee's answer ought to have been heard.

The Court erred, as movant contends, in ruling out the answer of Lee and not allowing it to come out as a part of the entire transaction.

9. Because the Court, over objection made by the defendant at the time the same was offered, that it was immaterial and irrelevant, permitted the witness Darley to testify that on the morning the body was found Newt Lee was composed.

Dfendant objected to this evidence as illegal, irrelevant and prejudicial to defendant which objection was overruled and movant assigns its admission as error for said same reasons.

This evidence was not only irrelevant and immaterial, as movant contends, but hurtful, because this evidence was heard upon the theory of comparison between the conduct of Lee and Frank.

10. Because the Court erred in failing, refusing, and declining, upon motion of the defendant made while the witness Conley was on the stand, to rule out, withdraw and exclude from the jury each and all of the following questions and answers of the witness Conley:

Q. What did he mean?

A. Well, what I taken it to be, the reason he said he wasn't built like other men, I had seen him in a position I hadn't seen any other man in that has got children.

Q. What position?

A. I have seen Mr. Frank in the office there about two or three times before Thanksgiving and a lady was in the office, and she was sitting down in a chair and she had her clothes up to here (up to her waist) and Mr. Frank was down on his knees, and she had her hands on Mr. Frank, and I found them in that position.

Q. When you came into the office before Thanksgiving day, now, when the lady was sitting in the chair?

A. Yes, sir; he saw me when he came out of the office, he saw me.

Q. What was said when they saw you?

A. When Mr. Frank came out of the office Mr. Frank was hollering "Yes, that is right, that is right" and he said, "That is all right, it will be easy to fix it that way."

Q. Well, did you ever see him on any other occasion?

A. Yes, sir; I have seen him on other times there.

Q. What other occasions?

A. I have seen Mr. Frank in the packing room there one time with a young lady lying on the table.

Q. How far was the woman on the table?

A. Well, she was on the edge of the table when I saw her.

The motion was made while the witness Conley was on the stand, and before any cross-examination had been had upon either of the circumstances referred to in said questions and answers, but after cross-examination upon other subjects had progressed a day and a half. The motion to rule out, withdraw and exclude was made because, as stated to the Court when the motion was made, said questions and answers were immaterial, irrelevant, illegal, prejudicial, and dealing with other matters and things and crimes irrelevant and disconnected with the issue in the case then on trial.

Movant contends this evidence was highly prejudicial, and the failure of the Court, upon proper motion, to rule it out was a great injury to the defendant. And the failure of the Court to rule out said prejudicial and irrelevant and immaterial evidence is here assigned as error and a new trial should be granted because said evidence was illegal, irrelevant and highly prejudicial and involved other transactions not legitimately under investigation, and the same amounted to accusing the defendant of other and independent crimes.

11. Because the witness Conley, at the instance of the solicitor, was permitted to testify that he had seen Frank in a position with women that he had not seen any other man in that has children; that he had seen Frank in the office of the Pencil Company about two or three times before Thanksgiving and a lady was in the office and she was sitting down in a chair and she had her clothes up about her privates, and Frank was down on his knees, and she had her hands on Frank; that Frank saw Conley when he came out of the office, that when Frank came out of the office he was hollering "Yes, sir, that is right, that is right" and he said "That is all right, it will be easy to fix it that way;" that at another time he saw Frank in the packing room of the factory with a young lady lying on a table—she was on the edge of the table when he saw her.

While Conley was on the stand, and before he was crossed about seeing the circumstances testified about, and after cross examination upon other subjects had been had for a day and a half, counsel for the defendant moved the Court that the next above stated testimony of the witness Conley be ruled out, withdrawn and excluded from the jury, stating at the time that such motion ought to be granted, because the testimony was irrelevant, immaterial, illegal, prejudicial, and dealing with other matters and things, and crimes, irrelevant and disconnected with the issues in this case.

The Court declined to rule out, withdraw, or exclude this testimony from the jury, but permitted the same to remain before the jury.

The action of the Court was erroneous and highly prejudicial to the defendant, and demands a new trial.

Such action of the Court was error because said evidence was illegal, irrelevant and hurtful to the defendant and involved other transactions not legitimately under investigation, and the same amounted to accusing the defendant of other and independent crimes.

12. Because the witness Conley, when on the stand, testified that he watched for Frank, at the Pencil Factory, four times on Saturdays, not on the day of the murder, and once on Thanksgiving day, 1912, while Frank was with women in his office, detailing certain signals by which the witness Conley was to lock and open the door.

When the first question was asked by the solicitor seeking to elicit whether witness had ever seen Frank up there in his office doing anything with young ladies before April 26, 1913, the defendant objected on the ground that the evidence sought was irrelevant and immaterial. The Court ruled that the evidence would be immaterial, but further questions were asked by the solicitor and elicited the evidence here complained of.

While Conley was still on the stand, and after cross examination a day and a half on other subjects, defendant's counsel moved to rule out, exclude and withdraw from the jury all the testimony, both direct and on cross, detailing Frank's associations with women and Conley's watching at other times than the Saturday of the murder, to-wit: April 26, 1913. Said motion was made upon the grounds stated and argued at the time the motion was made, that such testimony was immaterial, irrelevant, illegal, prejudicial, and dealt with other matters and things and crimes irrelevant to, and disconnected with, the issues on trial in this case.

The Court declined the motion made at the time upon the grounds, as stated, and in doing so erred, because the evidence sought to have been ruled out for the reasons stated, and the same amounted to accusing the defendant of other and independent crimes.

13. Because the Court, upon motion made when the witness Conley was still on the stand, declined to rule out, exclude and withdraw from the jury each and all the below questions propounded to witness Conley, and his answers thereto:

Q. Now, tell what kind of work you had done for him the other Saturdays.

A. I always stayed on the first floor, like I stayed on the 26th of April, and watched for Mr. Frank, while he and a young lady would be on the second floor chatting.

Q. You say chatting. Do you know what they were doing?

A. No, sir, I don't know what they were doing. He only told me they wanted to chat.

Q. Did you ever see him up there doing anything with young ladies?

A. Well, I have—

Q. Well, what would you do before when young ladies come there?

A. I would sit down on the first floor and watch the door for him.

Q. And watch the doors for him?

A. Yes, sir.

Q. How many times did you watch the door previous to Saturday, the 26th of April, 1913?

A. Well, I couldn't exactly tell you; it has been several times I watched for him.

Q. Who was there when you were watching the door?

A. Well, I don't know, sir, who would be there when I watched the door, but there would be another young man and another young lady there during the time I was at the door; a lady for him and one for Mr. Frank.

Q. Now, was Frank ever there alone?

A. Mr. Frank was there alone once, and that was Thanksgiving Day, that I watched for him.

Q. Well, do you know or not the lady—did any woman come there that day?

A. Thanksgiving Day?

Q. Yes.

A. Yes, sir.

Q. What kind of a looking woman?

A. She was a tall, heavy built lady.

Q. What did you do on that occasion?

A. I stayed down there and watched the door, just as he had told me to do this last time.

Q. Then what was done?

A. Well, after the lady came and he stamped for me, I went and unlocked the door as he said. He told me when he got through with the lady he would whistle, and when he whistled for me to go and unlock the door.

Q. That was on Thanksgiving day of what year?

A. Of last year, 1912. . . .

Q. He says: "What I want you to do, I want you to do, I want you to watch for me to-day as you have on other Saturdays."

A. And I says: "All right." . . .

And he says: "Now, when the lady comes, I will stamp as I did before."

Q. What did he mean?

A. I have seen Mr. Frank in the office there about two or three times before Thanksgiving, and a lady was in the office, and she was sitting down in a chair, and she had her clothes up to here (indicating), and Mr. Frank was down on his knees, and she had her hands on Mr. Frank, and I found them in that position.

Q. Well did you ever see him on any other occasion?

A. Yes, I have seen him another time there.

Q. What other occasion?

A. I have seen Mr. Frank in the packing room one time with a young lady laying on the table.

Q. How far was the woman on the table?

A. Well, she was on the edge of the table when I saw her. . . .

Q. Do you know the name of the woman that was up there with Mr. Frank?

A. Thanksgiving day?

Q. Yes.

A. No, sir. I don't know her name.

Q. Do you know the name of the other woman?

A. No, sir. I know the young man's name that was with one of the ladies, but I don't know the other lady's name. I know where she lives at.

Q. What is the name of the man?

A. That man's name is Mr. Dalton.

Q. Now, what kind of looking woman was it that you saw there Thanksgiving day in Mr. Frank's office?

A. Well, she was a tall built lady, heavy weight, she was nice looking, she had on a blue looking dress with white dots in it, and she had on a grayish looking coat with kind of tails to it. The coat was open like that (indicating), and she had on white slippers and stockings.

Q. Did Mr. Frank see you that time?

A. Thanksgiving day?

Q. Yes.

A. Yes, sir, he told me to come to the office—to come to the factory.

Q. When you come up into the office before Thanksgiving day now, when the lady was sitting in the chair?

A. Yes, sir. He saw me when he come out of the office, he saw me.

Q. What was said when they saw you?

A. When Mr. Frank come out of the office he was hollering: "Yes, that is right, that is right," and he said: "That is all right, it will be easy to fix it that way." . . .

CROSS EXAMINATION.

Q. Now, you said you watched for Mr. Frank?

A. Yes, sir.

Q. When was the first time you ever watched for Mr. Frank?

A. The first time I ever watched for Mr. Frank alone and knowed he was in the office—

Q. When was the first time you ever watched for Mr. Frank alone or with somebody else? Don't make any difference.

A. I couldn't exactly give you the—

Q. Tell us the best you can?

A. Some time during last summer, when I was watching for him.

Q. That was the first time, now?

A. Yes, sir.

Q. Whereabouts in the summer; what part of the summer did you do that watching that time?

A. Somewhere about in July.

Q. That's the first time; there was somebody with him that time?

A. Yes, sir. Somebody was with him all the time, off and on.

Q. Let's take the first time, now; what did Mr. Frank say to you that time; what did he say—what did he say to get you to watch for him?

A. I would be there sweeping, and Mr Frank come out and call me in the office.

Q. What?

A. I would be there sweeping and Mr. Frank come out and call me in the office.

Q. When was the first time he ever did that?

A. That was on Saturday he done that.

Q. He never had called you in there before when you were sweeping, except on Saturday?

A. He called me in there but never talked to me about that matter.

Q. Did he talk to you about anything?

A. Yes, sir.

Q. About what?

A. Sometime about the work, something like that.

Q. You mean during the week?

A. No, sir; he talked to me them Saturdays about it.

Q. When was the first time he called you in there to talk about the work or anything else?

A. How do you mean?

Q. On Saturday, when was the first time he called you in there to talk to you about the work or anything else on a Saturday?

A. I don't know about that.

Q. Tell us about that?

A. That was right after I started work there when he called me and talked to me about the work.

Q. And that was on Saturday?

A. Yes, sir; that was on a Saturday.

Q. About what time, now?

A. I don't know, somewheres about three o'clock, though.

Q. Sometime about three o'clock?

A. Yes, sir.

Q. What was your Saturday hours, Jim?

A. I always generally have to work from the time I get back there until half past four that evening.

Q. What time would you usually get back there?

A. I would leave away from there about half past twelve, ring out the clock, and come back about half past one or two o'clock.

Q. Would you ring in again?

A. Yes, sir; sometimes I would and sometimes I wouldn't. . .

Q. The first time you say you ever watched, you say you watched for Frank and somebody else last July?

A. Yes, sir.

Q. You don't know who the man was?

A. Yes, sir, I know who the man was.

Q. Who was he?

A. A man named Mr. Dalton.

Q. Where is he?

A. I don't know where he is now.

Q. How do you spell that?

A. I don't know how you spell it.

Q. What did he do?

A. A young lady that worked at the factory—I don't know what her name was—she would go off and get him and bring him in there.

Q. You don't know where he lived?

A. No, sir; I don't know where he lived, but I know where she lived.

Q. How come him to tell you who she was?

A. She was the one told me his name.

Q. Where is the young lady?

A. I don't know, sir, if she's anywhere in the room and if she'll stand up I can tell you if it is her.

Q. Give us her name?

A. I don't know, sir, what her name is; the detectives know her name; I don't.

Q. Did the detectives tell you who she was?

A. No, sir; they didn't tell me who she was, I described to them where she lives at.

Q. Where does she live?

A. She lives on West Hunter Street.

Q. Where?

A. Between Hunter and Haynes Street, around about Magnolia Street, down there.

Q. How come you to know she lived there?

A. Because I passed her house every morning.

Q. And the man was named Dalton?

A. Yes, sir.

Q. Who was with Mr. Frank?

A. The lady that was with Mr. Frank was Miss Daisy Hopkins.

Q. Where did she live?

A. I don't know, sir, where Miss Daisy Hopkins lived.

Q. Where did she work?

A. She worked up on the fourth floor.

Q. Do you know where she is now?

A. No, sir.

Q. Now, what time of day was that?

A. It would always be somewhere about three or three-thirty.

Q. Where did Mr. Frank tell you to watch, that time?

A. I would be up there sweeping, and Mr. Frank—

Q. That time—that particular time, I mean?

A. Well, I would be sweeping.

Q. I'm talking about that time—that particular time?

A. When he told me to watch?

Q. Yes, what did he say to you when he told you?

A. I'm going to explain to you now—

Q. That particular time, now?

A. Yes, sir.

Q. Give it to me, now?

A. I would be there sweeping—

Q. Oh, don't give me what you would be doing. I want to know about that particular time?

A. I was at the factory.

Q. Where?

A. Sweeping on the second floor.

Q. Now, what time was that?

A. Somewhere about three o'clock or three thirty.

Q. Somewhere about three or three-thirty?

A. Yes, sir.

Q. Then what happened?

A. Well, there would be one lady in the office.

Q. I am talking about that particular time, Jim—the first time he ever talked to you there, you were in the pencil factory?

A. Yes, sir.

Q. When Mr. Frank called you?

A. Yes, sir.

Q. You were on the second floor?

A. Yes, sir.

Q. Then Mr. Frank called you and then you went to Mr. Frank's office?

A. Yes, sir.

Q. Was there a woman in there with him?

A. Yes, sir, a lady was in there with him.

Q. Called you in the presence of the lady?

A. Yes, sir.

Q. Talked to you in the presence of the lady?

A. Yes, sir. He talked to me in the lady's presence.

Q. And that was Miss Daisy Hopkins

A. Yes, sir.

Q. And that was about three o'clock?

A. Or half past three.

Q. In July last?

A. Yes, sir.

Q. What did Mr. Frank say to you in that lady's presence? That's the time (first) time he ever talked to you about that matter, what did he say to you?

A. Yes, sir; he says: "Did you see that lady go out there?"—

Q. Why, I thought you said the lady was present?

A. Yes, sir. That lady was present. He would say: "Did you see that lady go out there?" I say: "Yes, sir," and he says: "You go down there and see nobody don't come up here, and you'll have a chance to make yourself some money."

Q. And the lady was present?

A. Yes, sir.

Q. Where was the other lady?

A. The other lady gone on out and to get that young man.

Q. She went with the man?

A. No, sir, she went out by herself to get the man and come back with the man.

Q. How long was she gone?

A. I don't know, sir, how long she was gone.

Q. And that was about half past three?

A. Yes, sir.

Q. The beginning of that transaction was about half past three?

A. Yes, sir.

Q. How long was she gone?

A. I don't know, sir, how long she was gone.

Q. You don't know how long she was gone?

A. No, sir; I don't know how long she was gone.

Q. Was she back after awhile?

A. Yes, sir.

Q. She came back after awhile and brought a man with her, and that man was Dalton?

A. Yes, sir.

Q. And Dalton's name you don't know?

A. Yes, sir; his name was Mr. Dalton.

Q. I know, but you don't know where he lives—nothing of that kind?

A. No, sir.

Q. When this young lady went off and came back and brought Dalton back, where did you see her again?

A. I saw her and Mr. Dalton when they come in at the door.

Q. You were watching then?

A. Yes, sir.

Q. Then where did they go?

A. Upstairs to Mr. Frank's office.

Q. Did you see them go to Mr. Frank's office?

A. I heard them walking in Mr. Frank's office.

Q. Then how long did they stay in Mr. Frank's office?

A. They didn't stay in there long, ten or fifteen minutes, I reckon.

Q. Then where did they go?

A. They came back down, and she says: "All right, James."

Q. Then his name was James Dalton?

A. No, sir; that was talking to me—said all right to me.

Q. You saw them go in the factory and heard them go to Mr. Frank's office, and how long did they stay there?

A. About fifteen minutes, I reckon.

Q. Then all of them came down together?

A. No, sir. They didn't all come down together—just this lady and Mr. Dalton.

Q. Then how long before Mr. Frank came down?

A. He was the last one that came down.

Q. How long?

A. About an hour after that.

Q. You never heard any of them come out of Mr. Frank's office after they went in?

A. Yes, sir; this lady and this man come back down.

Q. They came back and went down?

A. No, sir; they didn't go out. She came down and say: "All right, James," and I would say: "All right; and a place on the first floor that leads into another department, and after you get into this other department, there's a trap door and stairway that leads down in the basement, and they pull out that trap door and go down in the basement.

Q. And that time, she came down and says: "All right, James?"

A. Yes, sir.

Q. She knew you?

A. Yes, sir.

Q. Because she worked in the office?

A. No, sir; she didn't work in the office; she worked on the fourth floor.

Q. Then you went through that door—a door right behind the elevator?

A. No, sir; there isn't a door back of the elevator; there's a big wooden door, just a step there.

Q. I know; but it goes back in the back there?

A. Yes, sir.

Q. Then you opened that door?

A. Yes, sir.

Q. Then came back and opened that trap door?

A. I came and pulled up the trap door.

Q. And then they went down there?

A. Yes, sir.

Q. She said "All right, James?"

A. Yes, sir.

Q. Then you went and opened that door?

A. Yes, sir.

Q. She didn't tell you to open it?

A. Yes, sir; she said, "All right, James"—something like that.

Q. She said "All right," and then you opened the door?

A. Yes, sir.

Q. What made you open the door?

A. Because she said she was ready. I knowed where she was going; Mr. Frank told me to watch.

Q. Mr. Frank told you to watch?

A. Yes, sir.

Q. But he didn't tell you where they were going?

A. Yes, sir, he told me where they were going.

Q. How came him to tell you that?

A. I don't know, sir.

Q. When did he tell you that?

A. That day.

Q. That they were going to the basement?

A. Yes, sir.

Q. That he was going to stay in his office?

A. He didn't say where he was going to stay.

Q. Well, he stayed there?

A. As long as I stayed there I didn't see him go out.

Q. She said all right, and went through that door?

A. Yes, sir.

Q. Opened it and they went down?

A. Yes, sir.

Q. You shut that trap door?

A. Yes, sir.

Q. And that was in July?

A. Yes, sir.

Q. And the first time that ever happened?

A. Yes, sir.

Q. First time anybody ever asked you or talked to you about it?

A. Yes, sir.

Q. Now, they went down the basement?

A. Yes, sir.

Q. How long did they stay there?

A. I don't know, sir, how long they stayed there.

Q. What became of them?

A. Well, they came back up.

Q. About what time?

A. I couldn't give no time, because I don't know what time it was when they went down there.

Q. Well, about what time?

A. I don't know, sir; I couldn't give you what time they came back up.

Q. It was after 3:30 when this whole thing started?

A. Yes, sir, it was after 3:30 when this whole thing started.

Q. He told you to go down; they came up after a while?

A. Yes, sir, they came up after a while.

Q. Came up the same way they went down?

A. Yes, sir.

Q. Up through the same door?

A. Yes, sir.

Q. You kept that door locked all the time?

A. No, sir, I didn't keep it locked; I just kept it shut and stayed there by it.

Q. Stayed there the whole time?

A. Yes, sir.

Q. And never left?

A. No, sir.

Q. Well, what did they do after they came up through the door?

A. After they came up through the door me and Mr. Dalton stood and talked at the steps. Mr. Dalton gave me a quarter and he went out laughing, and she went up the steps.

Q. Where did she go?

A. She went and stood at the top of the steps a little while first, before she ever went to the office.

Q. Did she go to the office?

A. Yes, sir, she went to the office.

Q. How do you know she did; you couldn't see her go there, could you?

A. No, sir, I couldn't see her go in the office, but I could hear her go there. I heard her walking in there.

Q. How long did they stay before they came down?

A. Didn't stay very long before they came down.

Q. What next happened?

A. They came down and left, and then Mr. Frank come down after they left away.

Q. What time did Mr. Frank leave?

A. I don't know, sir, what time Mr. Frank left—

Q. Give us the best you can?

A. Frank left some time about half past four, I believe.

Q. Then they stayed there an hour?

A. I don't know sir; I guess so.

Q. Then Mr. Frank left, and you locked the door and you left?

A. No, sir, I left before he did. He came down and gave me a quarter out of his pocket. He says: "Is that all right?" and I says, "That's all right," and then left.

Q. Then he came out behind you and left?

A. Yes, sir.

Q. Now, that's the first time?

A. Yes, sir.

Q. Now, when was the next Saturday?

A. The next Saturday was mighty near the same thing.

Q. Well, what was the next Saturday; I didn't ask you whether it was the same thing or not?

A. That was about two weeks after that.

Q. Was that in August or in July?

A. Well, it was about the last of July or the first of August.

Q. Well, do you remember the date?

A. No, sir, I don't remember the date at all.

Q. Where did you get your money that time; did you draw it?

A. Yes, sir, I drawed my money that time.

Q. Go up and draw it yourself?

A. I disremember whether I drawed it myself or not.

Q. Can't remember anything about that?

A. No, sir.

Q. The first time it happened, did you draw it yourself?

A. I can't remember whether I did or not.

Q. You can't remember that?

A. No, sir.

Q. Tell us the next Saturday. You think it was about two weeks after that?

A. Yes, sir.

Q. Now, when did Mr. Frank first mention it to you that Saturday? When did he first mention it, that Saturday, to you?

A. Mr. Frank mentioned it to me the same Saturday I was there.

Q. About three o'clock?

A. I don't know, sir, what time it was.

Q. About half past two, was it?

A. About half past two, I guess, that Saturday.

Q. About half past two, you think, that Saturday?

A. Yes, sir.

Q. Where were you then?

A. At the factory.

Q. Where?

A. I was through sweeping, up on the fourth floor.

Q. Mr. Frank came and got you?

A. No, sir, he told me that morning before ever they paid off.

Q. What time was that he told you?

A. I don't know, sir, it was near twelve o'clock when he did tell me.

Q. Where did he tell you that?

A. In the box room.

Q. Anybody else present?

A. No, sir, not as I knows of.

Q. What were you doing in there?

A. What was I doing in there, I was looking after the boxes.

Q. What did he tell you then?

A. He told me: "Now you know what you done for me last Saturday—"

Q. He told you: "You know what you done for me last Saturday?"

A. The other Saturday. I says: "Yes, sir, I remember." He says: "I want to put you wise to this Saturday." I says: "All right, sir, what time?" He says: "Oh, about half past" (?) I says: "All right, sir."

Q. You remember that distinctly?

A. Yes, sir.

Q. What time did he go to dinner that day?

A. I don't know, sir, what time he went to dinner that day; I wasn't there when he went to dinner.

Q. What time did he get back that day?

A. That was somewhere about quarter past two. I saw him going up the steps with his clothes and his hat on. I don't know where he had been.

Q. What was the next that happened?

A. He went in his office next that happened.

Q. Then what was the next that happened?

A. Mr. Holloway, he came on out.

Q. Mr. Holloway was there?

A. Yes, sir.

Q. That was half past two o'clock?

A. No, sir, it wasn't half past two.

Q. I thought you said he always left about half past two?

A. No, sir, I didn't say he always done it.

Q. Now, when was that; give us the best estimate about it?

A. It's pretty hard to give the best estimate about the time, because I wasn't looking at the clock at all.

Q. What was the next?

A. After Mr. Holloway left away Miss Daisy Hopkins come on in there.

Q. What happened next?

A. She came into his office.

Q. You heard her come into his office?

A. I saw her that time.

Q. Did she see you?

A. Yes, sir.

Q. Then what happened?

A. Well, Mr. Frank come out and popped his finger and bowed his head like that and went back in the office.

Q. Where were you at?

A. I was standing there by the clock.

Q. He popped his hand?

A. No, sir, he popped his finger.

Q. He popped his finger and bowed to you?

A. Yes, sir.

Q. Then you went down?

A. Yes, sir, then I went down.

Q. And stood by the door?

A. Yes, sir.

Q. Didn't lock it?

A. No, sir, I didn't lock it; I shut it.

Q. Then what next happened?

A. I don't know, sir, what next happened.

Q. Did you hear Mr. Frank come out of his office at all?

A. No, sir, I didn't hear Mr. Frank come out of his office at all.

Q. You could have heard him if he went out?

A. No, sir, I couldn't have heard him if he went out.

Q. Well, how comes it you could hear him go in there and not hear him come out?

A. Because I was up there on the floor when she went in there, in the office.

Q. When you went down, she was in Mr. Frank's office?

A. No, sir, I was standing at the clock and saw her go into Mr. Frank's office.

Q. Then you went down and watched?

A. Yes, sir, I went down and watched.

Q. Did you hear her come out of his office?

A. No, sir.

Q. Didn't you say a while ago that, while you were at the door, you heard these other people coming out of his office?

A. No, sir, I said this—this was what I said: after I got to the top of the steps I could hear them going into his office.

Q. I know but you said this lady went and got a fellow; you stood by the door and heard them going into his office.

A. No, sir, I said her and this man's footsteps I heard them go into Mr. Frank's office. I said I stood down at the door and watched.

Q. You were watching when they came in, didn't you say?

A. Yes, sir, I said I was watching when they came in.

Q. You could see them when they came in there?

A. Yes, sir, I could see them when they came in there, and I said I went up and heard the footsteps going in Mr. Frank's office.

Q. Didn't you sit there and watch all the time?

A. I didn't sit there at the door until he notified me to do that.

Q. I'm talking about the time she went and got that man and came back?

A. I was standing by the door, yes, sir.

Q. Stood there from that on?

A. No, sir, I didn't stand there from that on.

Q. What did you do?

A. I stood there about the trash barrel then.

Q. On the first floor?

A. Right there by the side.

Q. And then you heard them going back?

A. I heard them go to Mr. Frank's office, yes, sir.

Q. When you were standing at the door, you couldn't see them going into Mr. Frank's office?

A. No, sir, I couldn't see them go into Mr. Frank's office.

Q. Wasn't you at Mr. Frank's office at that time?

A. Not at the door, no sir, when you are at the door you ain't there at Mr. Frank's office.

Q. When do you hit his office?

A. When you hit that trash barrel.

Q. Now, did anybody else come that day?

A. This second time?

Q. Yes.

A. No, sir, nobody else didn't come.

Q. How long did Mr. Frank stay there that time?

A. I don't know, sir, how long he stayed there that time.

Q. About how long?

A. Stayed there that time about a half an hour, I reckon—something like that.

Q. Then the girl went out?

A. Yes, sir; then the girl went out.

Q. Mr. Frank came and went out?

A. No, sir, he called me up there then, asked me was I there; I told him yes sir, I was about through now.

Q. Did he know whether you were through or not?

A. I don't know, sir, whether he did or not.

Q. He gave you some money?

A. He gave me half a dollar.

Q. And the other time they didn't give you but a quarter.

Q. Then you left?

A. Yes, sir.

Q. Give the next time?

A. Pretty hard for me to remember.

Q. It was Thanksgiving Day, the next time, wasn't it?

A. No, sir, it wasn't Thanksgiving Day, the next time; I had watched for him and Mr. Dalton, too, before that Thanksgiving Day.

Q. Give us the best you can, of the next time?

A. That was somewhere along in the winter time; I don't know, sir, the exact time.

Q. Well, Thanksgiving time is winter time, ain't it, Jim?

A. Yes, sir, but this is before Thanksgiving.

Q. How many times before Thanksgiving?

A. I watched for him three times before Thanksgiving day.

Q. Well, you've given me two of these times?

A. Yes, sir.

Q. When was the next one—about when?

A. I don't know, sir; I couldn't exactly tell. Somewhere about the middle of August, I guess, or the last part of August.

Q. You said it was winter, didn't you?

A. Well, that's somewhere near the winter, ain't it?

Q. Mighty cold about the middle of August, ain't it?

A. I said it was somewhere—

Q. Beginning to be mighty cold about the middle of August, ain't it?

A. No, sir, not so cold.

Q. Pretty cold, though, ain't it?

A. No, sir, not so cold.

Q. But it's obliged to be cold, though, ain't it?

A. No, sir, not so cold.

Q. Pretty cool though?

A. No, sir, not so cold. Some days is cool.

Q. What made you say it was near winter, though, Jim?

A. It's near winter.

Q. All right, how did that happen. Just give it to me like it happened. What time did that happen?

A. I don't know, sir, what time it was that it happened.

Q. About what time?

A. Sometime after Mr. Frank come back from dinner; I don't know what time it was.

Q. About what time?

A. I don't know, sir.

Q. What did he tell you—he wanted you to watch that time?

A. He told me that time on the fourth floor.

Q. What time was that?

A. This was somewhere—I don't know, sir, what time; I couldn't exactly tell.

Q. It was morning or evening?

A. It was in the evening.

Q. About what time?

A. I don't know, sir, I couldn't tell you exactly.

Q. Where was you when he told you?

A. Right at the elevator.

Q. Was it before twelve o'clock?

A. I don't know, sir, whether it was twelve o'clock or not.

Q. After twelve?

A. I don't know whether it was after twelve or not.

Q. You don't know anything about that; you can't remember that?

A. No, sir.

Q. Anybody standing around there then?

A. There was Gordon Bailey standing there.

Q. That's Snowball?

A. Yes, sir.

Q. Anybody else there?

A. Not to my knowing, it wasn't.

Q. Wasn't the office force there at that time?

A. They were not standing at the elevator; they were back at work.

Q. It must have been before twelve o'clock then, if they were back at work?

A. I guess so; I don't know whether it was twelve or not.

Q. What did he tell you then?

A. He told me: "I want to put you wise again for to-day."

Q. "I want to put you wise again for to-day?"

A. Yes, sir.

Q. That is the same words he used every time?

A. He didn't use that every time, but he used that more often than anything else.

Q. What else did he say. He hadn't seen you but three times; hadn't watched for him but three times—two times before that?

A. Yes, sir.

Q. You say that's the word he usually used?

A. I don't know about the usual, but he used that the other two times.

Q. Up to that time he used the same words every time, that: "I want to put you wise." Is that correct?

A. Yes, sir, but he said sometimes in a funny way—

Q. Well, sometimes. But you said you hadn't watched but three times; and every time he said then: "I want to put you wise." He done that, didn't he, Jim?

A. And he would say that and say it in another way, too.

Q. But the three times, he said: "I want to put you wise? "

A. Yes sir, the three times he said: "I want to put you wise."

Q. And that was the three times—say it the three times up to that time?

A. Well, yes sir, to my remembrance it was.

Q. You don't know that then?

A. No, sir, I don't know that.

Q. Well, you said that though?

A. Yes, sir. I said it.

Q. Did he say anything else to you but "I want to put you wise" at that time and place?

A. Yes, sir, "I want to put you wise like I been doing the other Saturdays down there." I said: "All right, sir."

Q. All right, now, what time did that happen?

A. Well, just happen in the evening.

Q. About what time?

A. I don't know, sir, what time it happen.

Q. Give us the best estimate you have got?

A. Well, some time half past, I reckon.

Q. Sometime half past; half past what—half past two or half past three?

A. It was half past two, I reckon.

Q. He came back you say. What made him come; did he come back and hunt you?

A. No sir, he didn't hunt me.

Q. Where were you?

A. I was standing by the office when he got there.

Q. Then he came in there with you?

A. Yes, sir.

Q. What did he say to you?

A. He told me, he says: "She be here in a minute."

Q. Then where did you go?

A. I stayed there at the office.

Q. Did you see her come in there?

A. Yes, sir; I seed her come in there.

Q. Who was she?

A. She was a lady what worked on the fourth floor, but I don't know her name.

Q. The same woman?

A. No sir, she's not the same woman.

Q. Miss Daisy had been there twice, and this was a new woman?

A. Yes, sir.

Q. Does she work there now?

A. I don't know, sir, whether she is or not. I'm not working there, and I don't know who all's working there now.

Q. What kind of looking lady was she?

A. Nice looking lady, kinder slim.

Q. What kind of eyes did she have?

A. I don't know, sir, I never paid no attetion to her eyes.

Q. What kind of hair?

A. I don't know, sir, exactly—had hair like Mr. Hooper there got.

Q. How do you know Mr. Hooper so well; you seem to know him pretty well, don't you, Jim?

A. No sir, I don't know, sir; I have seen Mr. Hooper before.

Q. He had a good deal to do with you down there?

A. No sir; I seen him once when he come down to the cell to see me.

Q. Was she grey haired, like Hooper—you say she had hair like Hooper's?

A. Yes, sir, she had hair like Mr. Hooper's.

Q. Ain't that a grey-headed fellow, sorter measley and broken down with age?

A. Don't look like he's grey to me.

Q. You have been right close to him, too, haven't you?

A. I've been right close to him, but not to pay no attention to his hair.

Q. Well, she had hair like Hooper?

A. Yes, sir.

Q. If he's grey-haired, she had too?

A. Well, she had hair like Mr. Hooper's.

Q. Was she blonde or brunette?

A. I don't know, sir, what you mean by that?

Q. You don't know what a blonde is?

A. No, sir.

Q. You don't know what a brunette is?

A. No, sir.

Q. Did she have light hair?

A. She had hair like Mr. Hooper's.

Q. What sort of clothes did she have on?

A. She had on a green suit of clothes.

Q. Green all over?

A. As far as I could see.

Q. What kind of shoes and stockings did she have on?

A. I didn't pay no attention to her shoes and stockings.

Q. But Miss Daisy Hopkins, what sort of clothes did she have on the first time she came down there?

A. The first time that she came there she had on a black skirt and a white waist.

Q. What kind of shoes and stockings?

A. I didn't pay no attention to what kind of shoes and stockings she had on.

Q. Didn't you tell Mr. Dorsey what kind of shoes and stockings she had on?

A. No, sir, I told him the lady that was there Thanksgiving Day had on white shoes and stockings.

Q. Now the next day what did she have on?

A. The next day she had on the same thing, black skirt and white waist.

Q. She had on exactly the same thing?

A. Yes, sir.

Q. And this other—there was a girl dressed in green all over?

A. Yes, sir, there was a girl dressed in green all over, this last one.

Q. And you don't know who she is?

A. No, sir; she worked up there on the fourth floor, but I don't know her name.

Q. You don't know whether she works there now or not?

A. No, sir, I don't know whether she works there now or not. I haven't been there—

Q. She worked there when you left?

A. She had been there that morning; I don't know whether she was there that evening.

Q. And you saw her there?

A. Yes, sir.

Q. Did she have on a green dress that morning?

A. No sir, she didn't have on a green dress that morning.

Q. What kind?

A. A dirty black dress with paints on it.

Q. Well, they all have that, don't they?

A. Yes, sir, when they are at work.

Q. You didn't see her when she had her working dress off?

A. No, sir, I didn't see her that day when she had her working dress off.

Q. You never inquired who she was?

A. No, sir, I never inquired who she was because it wasn't none of my business.

Q. Did she speak to you?

A. No, sir.

Q. Well, she's the one, anyway?

A. Yes, sir.

Q. She was the other one?

A. Yes, sir.

Q. Now, Jim, don't everybody in that factory know Jim Conley?

A. No, sir, didn't everybody in that factory know me.

Q. Give me one of them?

A. I don't know, sir, I don't know whether they all knew me or not.

Q. Didn't the lady go up and down on the elevator at all?

A. No, sir, the girls never did.

Q. You swept on the fourth floor?

A. Yes, sir, I swept on the fourth floor a while.

Q. How long did you sweep on the fourth floor?

A. Been sweeping up there ever since last January.

Q. You saw that little girl every day, that went to meet Mr. Frank, didn't you?

A. This last one?

Q. Yes?

A. I didn't see her every day, but I seen her there.

Q. Saw her many times and didn't ask who she was?

A. No, sir, I didn't ask who she was.

Q. Don't know who she was?

A. No, sir, I don't know who she was.

Q. Now, when she came in, did she see you when she came in?

A. Yes, sir, she seen me when she come in.

Q. Where did she go?

A. She went to Mr. Frank's office.

Q. Then you went and watched?

A. Yes, sir, then I went and watched.

Q. You didn't see them leave nor hear them leave Mr. Frank's office?

A. No, sir, I didn't see them leave and I didn't hear them leave Mr. Frank's office.

Q. How long did you stay there?

A. Half an hour, I reckon.

Q. And she came out?

A. Yes, sir.

Q. What became of Mr. Frank?

A. He came out and left me up in the office and he went out somewhere, I don't know where he went, and then he came back and says: "That's all right, I didn't take out any money."

Q. He went out somewhere?

A. Yes, sir.

Q. You mean he went out in town somewhere?

A. I don't knew whether he went out in town or not.

Q. Didn't you open the door?

A. Yes, sir, I opened the door.

Q. Well, he went out of the factory?

A. Yes, sir.

Q. And then went back?

A. Yes, sir.

Q. And you stayed there waiting for him?

A. Yes, sir.

Q. What did you say he said?

A. He said: "I didn't take out that money, didn't you see I didn't?" I says: "Yes, sir, I seed you didn't." He said: "That's all right, old boy, I don't want you to have anything to say to Mr. Herbert or Mr. Darley about what's going on around here."

Q. He told you he didn't want you to tell Darley?

A. Yes, sir.

Q. And then the next time, now, was Thanksgiving Day?

A. Yes, sir, the next time was Thanksgiving Day.

Q. What hour was it Thanksgiving Day?

A. I don't know, sir, what hour; I met Mr. Frank there that morning about eight o'clock.

Q. Anybody else there?

A. I didn't see anybody else there.

Q. Where did you meet him, then?

A. I met Mr. Frank right at the door; I was sitting on the box when he come in.

Q. That's when he mentioned it to you again?

A. That's when he taken me on the inside and told me—

Q. Tell me the words.

A. After he went on the inside, he says: "How are you feeling?" I says: "I'm feeling all right, Mr. Frank." He says: "Come here," he says, "a lady will be here a little while, me and her going to chat. I don't want you to do no work; I just want you to watch."

Q. About what time was that?

A. Somewhere between eight and half past eight.

Q. Nobody there then?

A. I didn't see nobody.

Q. Where did you go then?

A. He went upstairs.

Q. He went upstairs?

A. Yes, sir.

Q. Where did you go?

A. I stayed down on the first floor.

Q. How long was it before the lady came?

A. I don't know, sir, somewhere about half an hour.

Q. Something about nine o'clock, that morning?

A. I don't know, sir, what time it was; it was about half a hour.

Q. Well, you said you got there about half past eight?

A. I said somewhere about eight and half past eight.

Q. Well a half hour, then, would be somewhere between half past eight and nine, the lady came?

A. Yes, sir, it was a half hour.

Q. Did you know that lady?

A. No, sir, I didn't know that lady. I had never seen her around the factory.

Q. She had never worked there?

A. No, sir.

Q. And you never saw her before nor since?

A. I think I saw her in the factory two or three nights before the Thanksgiving Day, in there in Mr. Frank's office.

Q. You didn't have any talk with her that night?

A. No, sir.

Q. Nor with Mr. Frank either?

A. No, sir; I had some talk with Mr. Frank about explaining about that clock.

Q. But about the lady?

A. No, sir, didn't say nothing at all about the lady.

Q. Now, you had, you say, seen her there a few nights before?

A. Yes, sir.

Q. Sitting in Mr. Frank's office, was she?

A. Yes, sir.

Q. What time?

A. Somewhere near eight o'clock.

Q. What did you have to do there?

A. I had to stack some boxes up on the fourth floor.

Q. Eighth floor? You had to stack some boxes?

A. No, sir, I said fourth floor.

Q. That was about Thanksgiving Day?

A. Yes, sir.

Q. Was it the same week of Thanksgiving you saw her up there?

A. I don't know, sir, whether it was the same week of Thanksgiving, but somewhere near Thanksgiving; it wasn't many days.

Q. How was she dressed that night?

A. I disremember how she was dressed that night.

Q. What sort of looking face did she have?

A. She was a nice looking lady.

Q. What kind of hair did she have?

A. I didn't pay no attention, because I didn't go that close.

Q. What sort of complexion?

A. I don't know, sir, I didn't get that close.

Q. You don't know what sort of clothes, nor what sort of shoes?

A. I think she had on black clothes.

Q. How tall was she?

A. She was a very tall, heavy built lady.

Q. You are certain of that?

A. Yes, sir.

Q. Then, between half past eight and nine, she came to the factory?

A. Yes, sir, between half past eight and nine o'clock.

Q. Where were you?

A. I was standing down on the first floor.

Q. Standing down on the first floor?

A. Yes, sir.

Q. Was the door open when she came?

A. The front door was open when she came.

Q. You closed it?

A. I closed it after he stamped for me to close it.

Q. He stamped that time?

A. Yes, sir.

Q. He didn't do it before?

A. No, sir, because I would be down there and know.

Q. You heard her go into his room?

A. Yes, sir, I heard her go (into his office).

Q. Where was he standing?

A. Standing by the trash barrel, smoking a cigarette.

Q. She went upstairs and went into Mr. Frank's office, and you heard her?

A. I heard her going towards Mr. Frank's office.

Q. You heard her go in there?

A. I couldn't hear them go in; I heard her going towards it.

Q. Didn't you say you heard those others go in?

A. No, sir, I said I heard them going towards the office.

Q. You didn't say you saw them go in?

A. No, sir, I said I heard them go toward it.

Q. And you didn't say you heard them go in?

A. No, sir, I said I heard them go towards the office.

Q. You didn't say you saw them go in?

A. No, sir, I said I heard them go towards it.

Q. And you didn't say you heard them go in?

A. No, sir, I said I heard them go towards his office.

Q. But you didn't see the others?

A. I don't remember saying I seen the others.

Q. Now she came, and she went up and went towards Mr. Frank's office, and he stamped?

A. Mr. Frank came out there and stamped.

Q. Where did he come to and stamp?

A. Came to the trash barrel where he told me—

Q. You mean upstairs?

A. Yes, sir, he was up on the second floor stamping.

Q. And you were on the first floor?

A. Right about the trash barrel.

Q. And you were on the first floor?

A. Right about the trash barrel.

Q. And he told you he was going to stamp?

A. Yes, sir, two times.

Q. And then he stamped?

A. Yes, sir.

Q. And then you closed the door?

A. Yes, sir, like he said so.

Q. How long did you stay there?

A. I didn't stand in the door after I closed the door. I came back and sat down on the box.

Q. How long did you stay there?

A. About a hour and a half.

Q. That would have been until about 10:30—about 10 o'clock that you stayed there?

A. I reckon so; I don't know how long exactly it was.

Q. Then the lady came down?

A. No sir, Mr. Frank says: "I'll stamp after this lady comes, and you go and close the door and turn that night latch."

Q. That was the first time he ever told you about the night lock?

A. Yes, sir.

Q. The other times, he told you just to close it?

A. Yes, sir.

Q. But that time he told you to put the night lock on?

A. Yes, sir; and he says: "I'll stamp, and if everything is all right, you take and kick against the door."

Q. And that time you kicked against the door?

A. Yes, sir, I kicked on the door.

Q. You didn't kick against the door the other times?

A. No, sir, because the ladies always went upstairs—

Q. Well, she went up then, too, didn't she?

A. Yes, sir.

Q. But he told you to stamp and everything would be all right?

A. No, sir, he didn't tell me to stamp and everything would be all right, he didn't say that. He said he would stamp, and for me to kick the elevator door if everything was all right.

Q. And then you stayed an hour and a half that time?

A. Yes, sir.

Q. Then the lady came down?

A. No, sir, Mr. Frank come down—

Q. He left the lady up there?

A. No, sir, Mr. Frank come down to the two doors and unlocked the doors and went on—come back, and says: "Everything all right?" I says: "Yes, sir." He went to the front door and fixed it hisself, unlocked the front door hisself, he went and looked up the street like that (illustrating) and come to the steps and taken the knob and turned it, there at the head of the stair door, and told her to "come on."

Q. He turned the knob and told her to come on down?

A. Went to the stair doors.

Q. Told her to come down?

A. Yes, sir.

Q. And she left?

A. No sir, she come down; and after she got to me, she says to Mr. Frank, "Is that the nigger?"; and he says: "Yes"; and she says: "Well, does he talk much"; and he says: "No, he's the best nigger I've ever seen."

Q. She stopped there and looked at you?

A. No, sir.

Q. Didn't you say she stopped and asked Mr. Frank: "Is that the nigger?"

A. She asked Mr. Frank that.

Q. She stopped and said to Mr. Frank: "Is that the nigger?"

A. No, sir, she didn't stop.

Q. She just kept walking?

A. Yes, sir.

Q. Neither stopped, neither of them stopped?

A. No, sir, neither of them stopped at all; she just said that—

Q. Said: "Is that the nigger," and just kept walking on?

A. Yes, sir, she kept on walking.

Q. And kept on walking off?

A. Yes, sir, she kept on walking, and—

Q. Just kept on walking, and Mr. Frank said: "Yes, that's the best nigger I ever saw?"

A. Yes, sir.

Q. You didn't see them stop at all?

A. No, sir, I didn't see them stop at all.

Q. Went out together?

A. No, sir, they never went out together.

Q. What did Mr. Frank do then?

A. Mr. Frank went up and opened the door and come back up stairs.

Q. How long did he stay there?

A. I don't know, sir, how long he stayed there.

Q. You left there?

A. He told me to go back in the office—

Q. You went in the office?

A. Yes, sir; he called me. I went in the office, and Mr. Frank come and gave me a dollar and a quarter.

Q. Give you $1.25 that time?

A. Yes sir, he gave me $1.25 that time.

Q. You went out then?

A. No, sir, I stayed there a little bit. He asked me where I was going that day. I says: I ain't going nowhere; I'm going on home." He says: "I'm going home directly, too." I says: "Is that all, Mr. Frank." He says: "Yes," and I left away.

Q. Where did you go when you left?

A. I went to the beer saloon over there on Hunter and Forsyth Street.

Q. How long did you stay there?

A. I don't know, sir; about an hour, I reckon.

Q. Then went home?

A. No, sir, I went to Peters Street and stayed a good while.

Q. Drank some more beer over there?

A. No, sir, I didn't drink no beer over there.

Q. Didn't drink but one beer that day?

A. I don't know, sir, how many I drank at that saloon on Forsyth and Hunter.

Q. About what time did you leave the factory?

A. I don't know, sir, it was a little before twelve o'clock, but I don't know what time.

Q. So the girl didn't come out of the factory that day until a little before twelve o'clock.

A. I don't know, sir, what time she come out of the factory that day?

Q. You said you saw her leave?

A. I said she stayed about an hour and a half.

Q. Well, what time did she leave?

A. I don't know, sir, what time.

Q. What kind of dress did she have on?

A. Blue skirt with white dots in it.

Q. She had on a blue skirt with white dots in it?

A. Yes, sir, and white slippers and white stockings, and had a grey tailor-made coat—what I call a grey tailor-made coat—looked to me like with pieces of velvet on the edges of it.

Q. What kind of velvet was it?

A. Black velvet.

Q. What color was the cloth that made the coat?

A. It was grey.

Q. Did she have on any jewelry?

A. I didn't notice her hands.

Q. What sort of a hat?

A. Had a black hat, with big black feathers over.

Q. What else?

A. That's all I paid any attention to.

Q. She had white shoes and white stockings?

A. Yes, sir.

Q. Then Mr. Frank said he was going to dinner, and you didn't go back any more that day?

A. No, sir, I didn't go back any more that day; I left him there at the office.

Q. You left him at about twelve o'clock?

A. Yes, sir, a little before that.

Q. And wasn't anybody else there that day?

A. No sir, not while I was at the office, I didn't see nobody else there that day.

Q. The next time, now?

A. Next time was Saturday when I watched.

Q. How long was that after Thanksgiving?

A. That's somewhere after Christmas, way after Christmas, when I watched for him.

Q. That was in the dead of winter, then?

A. Yes, sir, in the dead of winter.

Q. About when?

A. About January, I reckon.

Q. About the middle of January, or when?

A. I don't know, middle, first or last, I can't say—somewhere in January.

Q. How do you know it was somewhere in January?

A. Because it was right after the first of the year.

Q. Well, if it was right after the first of the year, you know what time it was in January?

A. I said somewhere about the first or middle.

Q. Well, was it in middle, or first, or last?

A. I don't know, sir, somewhere one of them parts; it was right after New Year, I don't know whether one or two days after.

Q. You couldn't tell any better than that?

A. No, sir, I couldn't tell any better than that.

Q. That was another Saturday?

A. Yes, sir, that was another Saturday.

Q. When did he first talk to you about that?

A. Well, I disremember when he first talked to me about that.

Q. You don't remember what he said to you?

A. No sir, I don't remember what he said to me.

Q. But you know you were down there watching; that's the only thing you can remember about that?

A. I can remember one thing,— He said—

Q. You said a minute ago you couldn't remember anything.

A. I couldn't remember anything about him telling me about the watching, but I can remember about him telling me about who was coming.

Q. What did he tell you?

A. Said it be a young man with two ladies.

Q. When did he tell you that?

A. That was Saturday morning.

Q. What time?

A. Soon Saturday morning.

Q. About what time?

A. I reckon about half past seven o'clock.

Q. Was Mr. Holloway there at that time?

A. No, sir, I had seen him, but I was on the elevator.

Q. He came and got on the elevator with you?

A. No, sir, I was standing by the side of Gordon Bailey, and he come and told me.

Q. You can't remember what he told you except he was going to have a man and two ladies after awhile?

A. Said: "A man and two ladies will be there this evening," and said I may can make some money off this man.

Q. Said what?

A. That I could get to make a piece of money off this man.

Q. That was all he said to you about that?

A. Yes, sir.

Q. Didn't tell you when they would come?

A. Said be there this evening about the same time.

Q. You didn't say that awhile ago when I asked you what he said, did you?

A. You cut me off so quick I didn't have time to say it.

Q. Well, I'm sorry I cut you off, I'll open it again and give you a better chance. That was about half past seven?

A. Yes, sir.

Q. What floor of the factory?

A. I can't remember now just what floor it was on.

Q. You didn't see anybody at the time, except Mr. Holloway?

A. I saw Gordon Bailey; me and him was on the elevator together.

Q. He was talking to you so Gordon Bailey could hear him?

A. I don't know, sir, I reckon he could hear; he was talking so he could hear.

Q. He was talking so Snowball could hear it?

A. Yes, sir.

Q. Just talking to you about meeting a woman and let Gordon hear it?

A. He said them words, yes sir.

Q. Right before Gordon?

A. Yes, sir.

Q. And you remember what floor it was on?

A. No, sir, I don't remember what floor it was on.

Q. He didn't say anything more to you after that?

A. No, sir, he didn't say anything more to me after that.

Q. Then what did you do that evening?

A. I went and got through cleaning up about quarter after two, and I went and stood at the door.

Q. He hadn't told you to stay at the door—just told you some woman was coming?

A. Told me two ladies and a young man coming, and I could make myself some money off this man.

Q. All right. Then you went and stood at the door.

A. Yes, sir.

Q. Was the door open?

A. One door was.

Q. Broad, open daylight?

A. Yes, sir.

Q. What time did the man and the ladies come?

A. Somewhere about half past two or three o'clock.

Q. About half past two or three o'clock they came?

A. Yes, sir.

Q. They come right in?

A. No, sir, they didn't come right in. The two ladies stayed back; the young man, he come in. He asked me was Mr. Frank in the office; he says: "Mr. Frank put you wise?" I says, "Mr. Frank put me wise, how?" He says: "Didn't he tell you to watch the door, two ladies and a young man would be here?" I says: "He didn't tell me to watch the door." He says "Two ladies and a young man would be here," and, he says, "Well, I'm the one."

Q. Him and Mr. Frank used the same terms, then. Frank says: "I'll put you wise"; and he said: "I'll put you wise"?

A. Mr. Frank didn't say it that day.

Q. Well, but he said it the other times?

A. Yes, sir.

Q. And the two ladies stayed out there and talked to you?

A. Yes sir; then he come and told them to come on.

Q. They went up to Mr. Frank's office?

A. I don't know, sir, where they went after that, after they went upstairs, I don't know where they went after they got upstairs.

Q. You were near enough, wasn't you, to see?

A. No, sir, I was at the door.

Q. You don't know which way they went?

A. I saw them when they turned that way, towards the clock.

Q. You say it was about half past two?

A. Yes, sir, it was about half past two or three o'clock.

Q. How long did they stay there that time?

A. Stayed there, looked like to me, about two hours, I reckon.

Q. Then half past two and that would make it half past four o'clock?

A. I don't know, sir, what time it would make it.

Q. Did you lock the door?

A. No, sir, I stood just inside the door.

Q. Nobody came in while you were there and nobody came out?

A. No, sir, didn't anybody come in while I was there and didn't nobody come out.

Q. Did you know either one of those ladies?

A. No, sir, I didn't know either one of those ladies.

Q. Give me a description of those young ladies?

A. Well, I disremember what the ladies did have on.

Q. Can't you remember what either of them had on?

A. No, sir, I can't remember what either of them had on; I didn't pay much attention.

Q. Can't describe either one of those women at all, can you?

A. No, sir.

Q. What sort of looking man was he?

A. He was tall, slim built, heavy man.

Q. Ever see him before?

A. I have seen him there talking to Mr. Holloway.

Q. Did he work there?

A. No, sir, he didn't work there.

Q. When did you ever see him there talking to Mr. Holloway?

A. Seen him quite often talking to Mr. Holloway through the week.

Q. Seen him quite often?

A. Yes, sir.

Q. Quite often?

A. Yes, sir, through the week, come there talking to Mr. Holloway.

Q. Give us a description of him?

A. Well, I said he was a tall man.

Q. Well, did he have black hair?

A. I couldn't see his hair; he had on a hat.

Q. Had light eyes?

A. I don't know, sir, what you mean by that.

Q. Did he have grey eyes or blue or black?

A. I didn't pay much attention to his eyes.

Q. You had seen him there frequently talking to Mr. Holloway, though?

A. Yes, sir.

Q. Where did he talk to Mr. Holloway at?

A. Sitting out on the bench up there.

Q. Did you hear any conversation between him and Mr. Holloway?

A. No, sir, I couldn't hear anything between them.

Q. Ever seen him since then?

A. I seen him since he was talking to Mr. Holloway then.

Q. But you don't know who he was?

A. No, sir.

Q. Ever saw the girl before or since?

A. No, sir, never saw the girls before or since, to my remembrance I haven't.

Q. Now, Jim, you were talking to me when we left off about the time you say you watched for Mr. Frank.

A. Yes, sir.

Q. Did you watch for him again?

A. In January, yes sir.

Q. Well I am talking about January. Is that the last time you watched for him until this time?

A. Yes, sir, I think it was—if I am not mistaken.

Q. Well, you ain't mistaken about it, are you Jim?

A. I don't know, sir, I couldn't tell you about that.

Q. You have no recollection of any other time?

A. No sir, no recollection of any other time.

Q. You have got no recollection, you can't remember it, if you did?

A. Well, I don't know, sir.—

Q. Now let us take that time about the middle of July you say you watched for him the first time. What did you do the Saturday before you watched for him the first time?

A. The Saturday before I watched for him the first time?

Q. Yes.

A. I disremember now, went ahead with my work, I guess.

Q. You have no recollection of that at all?

A. No, sir.

Q. Now, let us take the Saturday before you say you watched for him, what did you do that Saturday?

A. Well, I thought you said to take the Saturday before I had watched for him.

Q. Well, I did, and I will now take the Saturday after you watched for him the first time?

A. Well, the Saturday I watched for him the first time—I disremember.

Q. You can't remember what happened that day?

A. No, sir.

Q. Nothing on that day?

A. No, sir.

Q. Well, the next Saturday?

A. Well, I watched for him that Saturday.

Q. You say you didn't watch for him until three weeks?

A. That would make three weeks.

Q. One Saturday and two Saturdays make three?

A. That is what I call three, three times that I watched for him.

Q. One Saturday would be one week?

A. Yes, sir.

Q. The next Saturday would be two weeks?

A. Yes, sir.

Q. And the next Saturday would be three weeks?

A. Yes, sir, and the next Saturday would be three weeks.

Q. But I am not asking about that. I am talking about the second Saturday?

A. You asked me what I did the second Saturday, well, I don't remember.

Q. You mean you watched for him one Saturday and then the second Saturday you watched for him again?

A. Then the second Saturday after that I watched for him.

Q. You missed a Saturday?

A. Yes, sir.

Q. And then you watched the next Saturday?

A. Yes, sir.

Q. That is what you say about it now?

A. Yes, sir, that is what I say about it now and what I said before.

Q. Now the Saturday after you watched for him the second time, what did you do?

A. I don't know sir; I disremember what I did.

Q. You don't remember anything about what you did at all now that day, do you?

A. No, sir, I don't remember.

Q. And the Saturday after that. Do you remember anything about that?

A. Well, I don't know, sir, about the Saturday after that.

Q. Nor the Saturday after that?

A. Yes, sir, the Saturday after that, I think about the first of August, I did some more watching for him, somewhere along there.

Q. You did some more?

A. Yes, sir.

Q. Then you watched about the middle of July?

A. About the middle of July.

Q. And about the first of August; three times?

A. Yes, sir.

Q. Right there together?

A. Yes sir, not one Saturday right after the other Saturday, though.

Q. One Saturday after that you didn't watch?

A. Yes, sir.

Q. And the next Saturday you didn't watch?

A. My best memory, the next Saturday, then I watched again, yes sir.

Q. That is the way you remember it now?

A. Yes, sir. That is the way I had it before.

Q. But that is the way you now remember it?

A. Yes, sir.

Q. Now let me see if I have got that right. You watched one Saturday in July; the next Saturday you watched?

A. Yes, sir.

Q. And the next Saturday you did?

A. Yes, sir.

Q. And the next Saturday you didn't watch, and the next Saturday you did?

A. Yes, sir.

Q. That is the way you remember it now?

A. Yes, sir.

Q. You are certain that is the way it happened; that is your best recollection?

A. Yes, sir.

Q. Of course, you don't know except from your best recollection. Then you didn't watch for him until Thanksgiving Day?

A. Until Thanksgiving Day.

Q. What did you do the Saturday before Thanksgiving Day?

A. I don't remember what I did.

Q. What did you do the Saturday after Thanksgiving Day?

A. I don't know what I did.

Q. And the next Saturday?

A. Well, the next Saturday, I could tell you what I did that Saturday.

Q. And the next Saturday?

A. Well, I don't know, sir, what I did the next Saturday.

Q. And the next?

A. The next Saturday I did some watching for him, then.

Q. Let me see if I get that now. You watched Thanksgiving Day?

A. Yes, sir.

Q. The next Saturday you didn't watch, and the next Saturday you did?

A. I watched somewhere along about the last of September.

Q. That is your recollection?

A. Yes, sir, somewhere about the last of September, somewhere like that.

Q. That is your recollection?

A. Yes, sir, about the last of September—somewhere like that.

Q. Well, now, that is your best recollection?

A. I say somewhere about the last of September.

Q. Well, I gave it right, didn't I?

A. I don't know, sir, I can't count by the week.

Q. Well, did you say that?

A. No, sir.

Q. What did you say?

A. I said something like that.

Q. Well, that means you are doing the best you can to give me the best memory you have?

A. All right, sir.

Q. Isn't that correct, Jim? You and I don't want to misunderstand each other, now?

A. No, sir, we won't misunderstand each other.

Q. Well, is that correct?

A. I say some time about the last of September I did the last watching.

Q. That was after thanksgiving?

A. Yes, after Thanksgiving.

Q. In September after Thanksgiving is your recollection?

A. Yes, sir, after Thanksgiving Day.

Q. About the last of September?

A. After Thanksgiving Day, yes, sir.

Q. About the last of September?

A. After Thanksgiving Day, yes, sir.

Q. Now, Jim, you don't remember any of these dates?

A. No, sir, I don't remember any of these dates, I cant tell about them.

Q. Let us see how much money you drew that Saturday that you watched for him; how much money did you draw that day?

A. I don't know, sir.

Q. What time did you draw it?

A. I don't know, sir, what time I drew it.

Q. Did you draw it at all, or did somebody draw it for you?

A. Well, I don't know, sir, whether somebody drew it for me or I drew it.

Q. You don't remember about that?

A. No, sir.

Q. You have no memory at all about that?

A. No, sir.

Q. What time did you get home the first morning you watched for him?

A. I couldn't tell you to save my life.

Q. Nor what time you went home, you couldn't tell me?

A. No, sir, I couldn't tell you.

Q. You couldn't tell me anything at all about that?

A. No, sir.

Q. The second time you watched for him. Can you remember the time you got back to the factory?

A. No, sir, I couldn't tell you what time I got to the factory.

Q. Or what time you left to go home?

A. Well, I don't know, sir, what time I left to go home.

Q. You can't remember?

A. No, sir, I don't know what time I left to go home.

Q. Now the second Saturday did you draw your money—the second time you watched for him—did you draw your money on that day or not?

A. I disremember now.

Q. Did you draw it, or did somebody draw it for you?

A. I disremember.

Q. How much did you draw?

A. I don't know, sir.

Q. Now, that third time, on the day before Thanksgiving; that is, three times before Thanksgiving, according to your recollection?

A. Yes, sir.

Q. Now, did you draw your money that week?

A. Before Thanksgiving I couldn't tell you about that.

Q. You don't know whether you drew your pay or whether somebody drew it for you?

A. No, sir.

Q. Or how much you drew?

A. No, sir.

Q. You don't remember that, do you?

A. No, sir.

Q. When did you draw your pay, before or after Thanksgiving, that week of Thanksgiving?

A. The week of Thanksgiving when did I draw my pay?

Q. Before or after Thanksgiving Day?

A. Well, to tell you the truth, I disremember.

Q. You don't remember?

A. No, sir.

Q. You can't remember whether you drew your pay before or after Thanksgiving?

A. No, sir.

Q. Can you remember what day of the week Thanksgiving was?

A. No, sir, I don't remember.

Q. And you don't remember what time you got down in the morning or what time you left?

A. No, sir.

Q. You have no memory at all about that, have you?

A. No, sir.

Q. The day after Thanksgiving. Do you remember what you had been doing that day?

A. No, sir, but to my remembrance I think I came back to work the day after Thanksgiving.

Q. Are you certain about that, or have you any memory at all about it?

A. I think I came back to work.

Q. What time did you get there?

A. I don't know, sir, what time I got there.

Q. What time did you leave that day?

A. I don't know, sir.

Q. You can't remember anything about that?

A. No, sir.

Q. The day before Thanksgiving, what time did you go down to the factory that day?

A. I don't know, sir, what time I got to the factory that day.

Q. How many hours did you make that day?

A. I don't know, sir.

Q. When did you leave that day?

A. I don't know, sir.

Q. Who did you see at the factory that day, that you remember?

A. Well, I saw, I reckon, most everybody there.

Q. Well, who do you remember seeing there?

A. I remember seeing Mr. Frank.

Q. You do remember seeing Mr. Frank?

A. Yes, sir.

Q. The day before Thanksgiving?

A. Yes, sir.

Q. Did you see him the day after Thanksgiving?

A. Yes, sir, I saw him the day after Thanksgiving.

Q. You remember those two facts well?

A. Yes, sir, I remember those two.

Q. You saw Mr. Frank the day before Thanksgiving when you got there?

A. Yes, sir.

Q. And you saw him the day after Thanksgiving?

A. Yes, sir.

Q. Who else did you see?

A. Well, I don't remember now, who else I did see.

Q. You don't remember who else you saw?

A. No, sir.

Q. Did you see Mr. Darley?

A. I don't think I saw Mr. Darley.

Q. Who is the foreman in the place where you work?

A. Well, they have got foreladies there.

Q. Who is the forelady?

A. One was Miss Clark and Miss Willis.

Q. In the place where you work, where is that?

A. On the fourth floor.

Q. Did you see either one of them there that day?

A. I don't remember.

Q. Let us take the first Saturday you said you watched for him. How many hours did you make that day?

A. I don't know, sir, how many hours.

Q. You can't remember anything about that?

A. No, sir.

Q. Or the second day, do you know how many hours?

A. No, sir.

Q. Nor the third?

A. No, sir.

Q. Or Thanksgiving?

A. No, sir.

Q. Do you know how much you were paid for either one of those days?

A. Yes, sir, I can tell you what I was paid Thanksgiving Day when I watched for him.

Q. Well, you know that was $1.50?

A. No, sir, I said it was $1.25.

Q. Well, outside of the factory, do you remember what you got for your services?

A. Outside of the factory, I remember once I got a half a dollar; then, again, I remember getting half a dollar.

Q. That is when you were watching for him, you say?

A. Yes, sir.

Q. And you got how much on Thanksgiving Day?

A. I got $1.25.

Q. The day before that?

A. The day just before that, I don't remember just how much I got from him that day.

Q. The Saturday before that?

A. You mean for watching?

Q. Yes.

A. Well, the Saturday before that I don't know, sir, what I got that Saturday. I don't think I done any watching that Saturday.

Q. Well, you watched three Saturdays before Thanksgiving?

A. Yes, sir.

Q. And then you watched again about the last of September?

A. Yes, sir.

Q. How much did you get the first time?

A. The first—

Q. But let us take them up the other way. How much did you get the first Saturday before Thanksgiving? How much did he pay you then?

A. I remember getting 75 cents then; 50 cents from him and a quarter from the other man.

Q. Well, the next time?

A. The next time I remember getting 50 cents.

Q. The next time?

A. I remember getting 50 cents then.

Q. But you don't know how much you got for your regular work for any of those days?

A. No, sir.

Q. You can't remember anything about that?

A. No, sir—

Q. The first day you said you watched for Mr. Frank, was Snowball there that day?

A. No, sir, Snowball was not there.

Q. You didn't see him?

A. No, sir, I didn't see him. I think he laid off.

Q. How about the next day?

A. I don't remember about the next day. I don't remember whether I seen Snowball there on the next day or not. I don't remember about where he was.

Q. Well, the third one; was Snowball there that day?

A. I disremember about the third Saturday.

Q. Well the next one was Thanksgiving. Did you see him Thanksgiving morning?

A. I didn't see him Thanksgiving morning, but I saw him the day before Thanksgiving.

Q. That is the time when you heard Mr. Frank talking in the presence of Snowball?

A. Yes, sir.

Q. He didn't hesitate to talk for Snowball?

A. No, sir.

Q. He talked before Snowball just like he did before you?

A. Yes, sir.

Q. The first time he did that was Thanksgiving Day, that he talked before Snowball?

A. Not Thanksgiving Day, no, sir.

Q. The day before Thanksgiving?

A. Yes, sir, the day before.

Q. When was that when you and him and Snowball were talking together?

A. I don't know what time it was.

Q. You don't know what time that was?

A. No, sir, I don't know what time it was.

Q. You don't know what time that was?

A. No, sir; I don't know what time it was.

Q. Was it in the morning?

A. Yes, sir, somewhere along in the morning.

Q. Or in the afternoon?

A. It was somewhere in the morning.

Q. About what time in the morning?

A. I don't know, sir, what time it was; I reckon somewhere before 12 o'clock.

Q. Was Snowball the elevator man?

A. Yes, he was running the elevator that day.

Q. The date you don't remember, but it was sometime in September, before Thanksgiving Day?

A. Yes, sir.

Q. The day before Thanksgiving?

A. Yes, sir.

Q. And Snowball was the elevator man at that time?

A. No, sir.

Q. How came him to be running the elevator?

A. Because he wanted me to swap places with him, and I wouldn't do it; and he went to work and swept some trash in the box, and I had to sweep it out.

Q. You were the elevator man?

A. Yes, sir.

Q. But he was running it?

A. Yes, sir, he was running it then.

Q. Did Mr. Frank say anything about Snowball running it instead of you?

A. No, sir, he didn't say a word.

Q. It didn't attract his attention at all?

A. No, sir, didn't attract his attention at all.

Q. How long had Snowball worked at the factory?

A. I don't know, sir—

Q. Now, that time when you watched in January, was Snowball there that day—I believe you said it was in January?

A. Yes, sir, I said I watched one time in January.

Q. Well, was Snowball there?

A. I don't know whether he was or not?

Q. Now, the only time you ever heard Mr. Frank say anything in front of Snowball was that time you have just mentioned? Thanksgiving, is that what you said?

A. Yes, sir.

Q. You heard him say something before Snowball then?

A. One time was in January.

Q. Where was that, in January?

A. He said that in the box room. In the box room, he told me.

Q. Snowball was in there?

A. Yes, sir, he was helping me to stand the boxes.

Q. Snowball was in there?

A. Yes, sir, he was helping me to stand the boxes.

Q. He walked up there and told you before Snowball?

A. I don't know whether he knew Snowball was there or not.

Q. Was he close to Mr. Frank?

A. No, sir, Snowball was sitting up in the rack.

Q. Was he in sight, or not?

A. Yes, sir, he was in front of the little partition, between me and Mr. Frank.

Q. You could see him, could you?

A. No, sir, I couldn't see him from where he was standing, but I knowed he was there.

Q. Mr. Frank wouldn't hide it from Snowball; he would talk before Snowball all right?

A. I don't guess he would if he had seen him.

Q. Tell a single one he has ever talked to you about, except business, before that first time you watched for him. Give us the day and time he ever talked to you, and what he talked about?

A. I couldn't give you the day or time about that at all.

Q. Give the day when he ever jollied with you, prior to the time he talked to you the day before he talked to you the day before you watched for him?

A. I couldn't give you the date. I couldn't tell you the date about it at all—

Q. How long was that before the day you watched for him?

A. I don't know, just directly after Mr. Darley had come there.

Q. That was after he had that talk with you that you are talking about?

A. After he had what talk with me?

Q. The one that he had with you in the elevator?

A. Yes, sir, that was after that time.

Q. The first time you ever saw him have any talk at all with Snowball, except on business, was that day he talked about that girl right before you and Snowball?

A. Yes, sir, that was the first day.

Q. That is the first time?

A. Yes, sir, the first time I saw him talk in front of Snowball.

Q. He just come in there and commenced talking to you, and paid no attention to Snowball?

A. He didn't know Snowball was in there.

Q. In the elevator. How could he help seeing him if he was in the elevator?

A. The elevator was gone down. Whenever I would get ready to work at night, he would send the elevator to the basement, and we would go in the back room.

Q. You were not on the elevator when you had that talk?

A. No, sir, that talk was in the back room.

Q. I am talking about just before Thanksgiving. You were in the elevator that day?

A. Yes, sir, we were in the elevator then. I was standing right there beside the elevator.

Q. Well, Snowball was standing right there by you?

A. Snowball was standing right there by me, yes, sir.

Q. He could have seen him, Mr. Frank, couldn't he?

A. Yes, sir, he was where he could have seen him, and he was where he could have heard anything that was said.

Q. And Mr. Frank knew that he could have heard anything that was said?

A. Yes, sir, he knew he could have heard anything that was said.

Q. He saw Snowball standing there?

A. Yes, sir, he saw Snowball standing there.

Q. Well, take last Thanksgiving Day. How many was there?

A. This gone Thanksgiving?

Q. Yes.

A. I don't know; there was a big crowd.

Q. When did Miss Daisy Hopkins work there?

A. Oh, she worked in 1912.

Q. 1912?

A. Yes, sir.

Q. You are certain of that?

A. Yes, sir, I am certain she worked there in 1912.

Q. What floor did she work on?

A. She worked on the fourth floor.

Q. The fourth floor?

A. Yes, sir.

Q. And she worked there in 1912?

A. Yes, sir.

Q. What time in 1912 did she quit there?

A. I don't know what time.

Q. About when, Jim?

A. I don't know when she quit there.

Q. What time of the year did you see her working there?

A. I saw her working there in 1912.

Q. What part of the year?

A. Well, I saw her working there from June on up.

Q. June on up?

A. Yes, sir, up until about near Christmas.

Q. All right, you saw her working there from June or July of 1912 until Christmas?

A. Yes, sir.

Q. Or about that time?

A. Yes, sir.

Q. And she worked on the fourth floor?

A. Yes, sir, she worked on the fourth floor.

Q. Has she worked there in 1913?

A. I don't know; I don't remember seeing her there; I don't know whether she has worked there in 1913 or not.

Q. You can't remember that?

A. No, sir, I can't remember that.

Q. You worked on the same floor with her, didn't you?

A. I didn't work with her at all. I worked on the same floor.

Q. And you don't know whether she worked there in 1913 or not?

A. No, sir, I don't remember.

Q. But you know she worked there from June until about Christmas?

A. Yes, sir, I know she worked there from June until about Christmas.

Q. You are very certain of that?

A. Yes, sir.

Q. Do you know when Miss Daisy left—Miss Daisy Hopkins?

A. No, sir.

Q. You don't remember when she left?

A. No, sir, I don't remember that.

Q. Was she married or a single lady?

A. I don't know.

Q. Now, describe Miss Daisy to us?

A. Well, Miss Daisy she was low lady, kind of heavy, and she was pretty; low, chunky, kind of heavy weight, and she was pretty.

Q. Can't you give a better description of her than that?

A. No, sir, that is the best I can give of her.

Q. What sort of color hair did she have?

A. Well, I don't remember what color hair she had.

Q. What color eyes?

A. I didn't pay no attention to her eyes.

Q. What sort of complexion?

A. What do you mean by complexion?

Q. Well, don't you know what complexion means?

A. No, sir, not complexion.

Q. You don't?

A. No, sir.

Q. You are dark complexion and I am white?

A. Yes, sir.

Q. Well, with that definition?

A. She was white complexion.

Q. Well I know, but was she fair or brunette, or was she blonde, or what was she?

A. I don't know nothing about no brunette.

Q. Was she dark skinned, or fair skinned, for a woman. I know, of course, she was a white woman; but there are some dark skins and some light skins, aren't there?

A. Yes, sir, there is some dark skins and some light skins.

Q. Which was she?

A. She was light skinned.

Q. She was light skinned?

A. Yes, sir.

Q. But you don't remember what sort of hair; what sort of nose did she have?

A. I didn't pay any attention to her nose.

Q. What sort of ears did she have?

A. She had ears like people.

Q. Like folks?

A. Yes, sir.

Q. I didn't expect her to have them like a rabbit; and she didn't have, did she?

A. No, sir, she didn't have ears like a rabbit.

Q. Well, did she have large or small ears? Do you remember that?

A. No, sir, I didn't pay any attention to her ears, whether they were large or small.

Q. You can't give any description of her at all now, can you, Jim?

A. I can't give a description of her, except she was a white lady.

Q. You say she was a white lady?

A. Yes, sir, and she was low and chunky.

Q. How old was she?

A. I don't know how old she was.

Q. How old did she look to be?

A. She looked to be like about 23 years old.

Q. About 23 years old?

A. Yes, sir.

Q. Was she working there when you went there or not?

A. I don't know.

Q. You don't know.

A. No, sir.

Q. The only time you can remember was that she worked from June, 1912, until Christmas, 1912?

A. Yes, sir, that is it.

Q. You can remember that?

A. Yes, sir, or near about Christmas.

Q. You can remember that?

A. Yes, sir, or near about Christmas.

Q. Now, the very first time you ever saw Miss Daisy Hopkins was some time in June, 1912?

A. Yes, sir.

Q. The first day you ever knew she was there was the day that note was sent down?

A. Yes, sir.

Q. The first day you ever knew she was there was the day that note was sent down?

A. Yes, sir.

Q. You don't remember ever to have seen her there before that?

A. Yes, sir, I remember seeing her there after that time.

Q. I said before?

A. No, sir, I don't remember seeing her there before that time.

Q. That is the way you fix it now, how do you fix the time she left there?

A. How do I fix the time she left there during Christmas?

Q. That is what I want to know?

A. Because Mr. Dalton told me she wasn't coming back.

Q. Mr. Dalton told you?

A. Yes, sir.

Q. Did Mr. Dalton work there?

A. No, sir, he didn't work there.

Q. Where does Mr. Dalton work?

A. I don't know where Mr. Dalton works at.

Q. When Mr. Dalton told you Christmas that she was going away, where was Mr. Dalton?

A. He was there.

Q. I know, but where was he when he told you that?

A. He was coming out of the factory.

Q. When was that?

A. It was Saturday; I don't know the date.

Q. You don't remember the date?

A. No, sir.

Q. You don't remember the date now?

A. No, sir.

Q. You don't remember his name?

A. I know his name was Dalton.

Q. What else besides Dalton?

A. No, sir, I don't know his first name.

Q. You don't know where he lived?

A. No, sir.

Q. Or where he works?

A. No, sir.

Q. Describe Mr. Dalton to me?

A. Do what?

Q. Tell me what kind of a looking man Mr. Dalton was?

A. He was a slim looking man, and tall with it.

Q. A slim looking man, and tall with it?

A. Yes, sir.

Q. And what else?

A. That is all I can tell you about him.

Q. You can't give any other or better description?

A. No, sir; his eye lashes seemed to be a little thick.

Q. Eye lashes thick?

A. Yes, sir.

Q. What was the color of his eye lashes?

A. I disremember now what color his eye lashes was.

Q. What was the color of his hair?

A. His hair was black, I think; I am not sure.

Q. Are you certain?

A. No, sir, I am not.

Q. You are not certain about that?

A. No, sir.

Q. What sort of complexion did he have?

A. What kind of complexion?

Q. Was he light complexion, or dark complexion? Was he darker or lighter complexion than I am?

A. He was just about your complexion.

Q. About my complexion?

A. Yes, sir.

Q. Well, would you call me a light complected man or a dark complected man?

A. I could call you a light complected man.

Q. Light?

A. Yes, sir.

Q. How much did Mr. Dalton weigh—about how much?

A. I don't know; about 135 pounds.

Q. About how tall was he—would you say he was?

A. Well, he was tall; I guess he was about as tall as that young man sitting there.

Q. About as tall as this man (indicating Mr. Arnold)?

A. Yes, sir.

Q. Weighing about as much?

A. I don't know whether he would weigh as much as that man, or not.

Q. Does he look like he would weigh about that much?

A. Yes, sir, he looks like he would weigh about that much.

Q. Then he was about the size of Mr. Arnold, Mr. Dalton was?

A. Yes, sir, just about that size.

Q. How old a man did Mr. Dalton look to be?

A. He looked to be a man somewhere about 35 years old.

Q. About 35 years old?

A. Yes, sir.

Q. You don't know where he lived?

A. No, sir.

Q. You don't know anything about that?

A. No, sir, I don't know where he lived at.

Q. How many times did you ever see him?

A. I don't know about that.

Q. Did you see him around the factory?

A. I saw him around there, coming around the factory after a girl.

Q. Did you ever see him any other place except around the factory?

A. No, sir, I never saw him anywhere except around the factory.

Q. How many times did you see him around the factory?

A. Several times I saw him there.

Q. About how many?

A. I don't know.

Q. You saw him one time coming out with a girl; what was he doing the other times you saw him?

A. The first time I saw him he was going out with a lady that he brought in there.

Q. That is the time you have done told about?

A. Yes, sir.

Q. What date was that, about when?

A. That was on Saturday.

Q. Well, about what month?

A. Somewhere along in June.

Q. Somewhere along in June or July?

A. July.

Q. Sometime in July?

A. Yes, sir.

Q. That is the first time you ever saw him?

A. Some time about the last of July.

Q. Where did you see him then?

A. Around at the factory.

Q. What was he doing then?

A. He come there with a lady.

Q. That same one?

A. Yes, sir.

Q. That same lady?

A. Yes, sir.

Q. You have done told about that this morning?

A. Yes, sir.

Q. When did you see him again?

A. I saw him again about two weeks after that.

Q. What was he doing then?

A. I just met him in the door then.

Q. Met him in the door?

A. Yes, sir.

Q. What date was that, about when?

A. I don't know; it was on a Saturday; I disremember the time.

Q. That is the time you have already talked about. You have done told about that?

A. Yes, sir, I have done told about it.

Q. This morning?

A. Yes, sir.

Q. What month was that?

A. I don't know; somewhere about the last of August, I reckon.

Q. About the last of August, you reckon?

A. Yes, sir.

Q. When did you see him again?

A. I didn't see him no more, I don't reckon, until along about up to that Thanksgiving time.

Q. Where did you see him then?

A. I saw him there, coming in there with a lady.

Q. That is the same Thanksgiving Day you have already told about?

A. Yes, sir.

Q. He come in there Thanksgiving?

A. No, sir, I didn't say Thanksgiving; it was before Thanksgiving. 1 said before Thanksgiving.

Q. When did you see him again?

A. No more then until after Christmas.

Q. Then where did you see him?

A. I saw him there to the factory with a lady.

Q. Did you ever see him anywhere else, except those times coming out of the factory?

A. No, sir, that is all.

Q. You saw him about Christmas?

A. Yes, sir, I saw him coming into the factory.

Q. You said until after Christmas?

A. I said this last time, I didn't see him no more until after Christmas.

Q. It was Christmas?

A. I didn't see him on Christmas day.

Q. About what time did you see him?

A. Sometime along in January.

Q. Somewhere along in January?

A. Yes, sir.

Q. Who did he come out with?

A. He came out that time by himself.

Q. By himself; where had he been?

A. Him and the lady was down in the basement.

Q. Down in the basement?

A. Yes, sir.

Q. Do you know who she was?

A. I don't know her name, but I know her face, and I know where she lives.

Q. How long since you have seen Mr. Dalton?

A. Well, I haven't seen Mr. Dalton now in about a month or more.

Q. Where did you see him the last time?

A. The detectives brought him down there to the station house, and said had I ever seen him about in there.

Q. And you told them what you knew?

A. Yes, sir, I told them about what I knew.

Q. And you haven't seen Mr. Dalton since then?

A. No, sir.

Q. Now, Jim, how was Mr. Dalton dressed the first time you ever saw him?

A. Well, I disremember now how he was dressed.

Q. Can't you give us any help about that at all?

A. All I can remember him having on, I think, was a brownish looking suit of clothes.

Q. What sort of hat did he have on?

A. I didn't pay no attention to his hat.

Q. What sort of shoes did he have on?

A. I didn't pay no attention to the shoes.

Q. When was the next time you happened to see him?

A. The next time I saw him.

Q. What sort of clothes did he have on then?

A. I disremember. I didn't pay no attention to his clothes.

Q. The next time, what did he have on?

A. I don't know what he had on the next time; I didn't pay no attention to that.

Q. And the next time?

A. I didn't pay no attention to his clothes that time.

Q. The last time you saw him, what did he have on?

A. I didn't pay no attention to his clothes the last time.

Q. You can't tell me anything about what sort of clothes he ever wore, except the one time that he had on a brown suit?

A. Yes, sir, he looked like a man that had just got off from work and put on clothes enough so as to go through the streets.

Q. He had on a brownish suit?

A. Yes, sir.

Q. Did he have any mustache the first time you ever saw him?

A. No, sir, he didn't have any mustache.

Q. Did you ever see him with any mustache?

A. Not to my knowing.

Q. You know you saw him?

A. Yes, sir, I know that I saw him, but I didn't pay no attention to his mustache.

Q. Did he have any whiskers?

A. No, sir, he didn't have any whiskers.

Q. And you don't remember whether he ever had any mustache?

A. No, sir, I can't remember whether he had a mustache or not.

Q. You wouldn't want to say about that?

A. No, sir, I wouldn't want to say about that, because I don't remember about that.

Q. Now, take the first day you said you waited there for Mr. Frank. Did you see anybody, Mr. Darley, that day about the factory, or Mr. Holloway?

A. The first Saturday?

Q. Yes.

A. Yes, sir, I saw Mr. Holloway there on the first Saturday.

Q. What time did he leave there?

A. Well, I don't know. He left away from there somewhere about two or half past two, I reckon.

Q. Well, don't reckon, please; tell what you remember?

A. He left away from there about two or half past two, all right; I couldn't say just what time it was.

Q. You don't know what time it was?

A. He generally stayed—

Q. Not what he generally did; but on that particular day—that day, what time did he leave—the first time you said you waited for Mr. Frank?

A. He left away from there somewhere about two or half past two.

Q. Do you remember it?

A. Yes, sir, I can remember it.

Q. Did you see Mr. Darley that day?

A. I saw him that morning.

Q. Well, now, what time did he leave?

A. I don't know what time he left.

Q. Well, now, why can't you tell when he left the factory, if you know when Mr. Holloway left?

A. Because I always met Mr. Holloway when he was leaving, because he was always leaving, too.

Q. Always leaving?

A. Yes, sir.

Q. You don't know how late he stayed there that day, do you, nor whether he came back or not?

A. No, sir, I don't know whether he came back or not.

Q. The next time you watched, did you see Mr. Holloway that day?

A. The next Saturday I watched, I don't think Mr. Holloway was there; the next Saturday he was sick.

Q. You don't think you saw him?

A. No, sir, I don't think I saw him.

Q. He was sick?

A. He was sick that Saturday.

Q. He was sick on that Saturday?

A. Two Saturdays in June.

Q. He was sick one Saturday when you watched?

A. Yes, sir.

Q. About what date was it; about what date was it when you watched, when he was sick?

A. It was somewhere about three o'clock, I reckon.

Q. What month was it that old man Holloway was sick when you watched?

A. I don't know whether he was sick or not; they told me he was sick.

Q. You said he was sick?

A. They told me he was sick.

Q. They reported to you that he was sick?

A. Yes, sir.

Q. What date was that?

A. It was about the last of July, the first or last—or something like that.

Q. What date was it?

A. It was the last of July or first of August, or something like that.

Q. You said he was sick again. When was he sick again?

A. He was sick again up in this year.

Q. This year?

A. Yes, sir.

Q. I am not talking about that. Did you see Mr. Darley that time when Mr. Holloway was sick?

A. When Mr. Holloway was sick, I disremember now whether I seen Mr. Darley that day or not.

Q. Did you see Mr. Schiff that day?

A. I disremember whether I saw Mr. Schiff or not.

Q. You disremember that?

A. Yes, sir.

Q. Did you see anybody that day?

A. Yes, sir, I seen somebody that day.

Q. Who?

A. I saw Mr. Frank that day for one person.

Q. I know; but outside of Mr. Frank, who else of the office force did you see that day—anybody or not?

A. The office force; well, I disremember now.

Q. You disremember now?

A. Yes, sir.

Q. Well, now, the next time you watched there, that was Thanksgiving, wasn't it?

A. No, sir, that was before Thanksgiving.

Q. Before Thanksgiving?

A. Yes, sir.

Q. About what time?

A. Well, it was somewhere about the last of August.

Q. Last of August?

A. Yes, sir.

Q. Well, now did you see anybody there that day? Was Mr. Holloway sick that day, too? He was sick that day, too, wasn't he?

A. No, sir, he wasn't sick that day.

Q. Did you see him.

A. Yes, sir, I saw him that day.

Q. What time did he leave that day?

A. I don't know; he left about two o'clock, I reckon.

Q. Don't reckon, please, Jim; tell us if you have any memory about it, say so; and if you haven't, say you haven't, please.

A. He left away from there about two o'clock.

Q. Then, awhile ago you said about half past two, and now you state two?

A. No, sir, I said he left away from there about half past two the first time.

Q. And this time, what time did you say he left?

A. I said he left away from there about two.

Q. About two o'clock?

A. Yes, sir, that time.

Q. Did you see Mr. Darley that day?

A. I disremember whether I did or not.

Q. You disremember that?

A. Yes, sir.

Q. The next time was Thanksgiving day—that you watched for him?

A. The next time I watched for him—

Q. Was Thanksgiving Day?

A. Was the last day, the last of September, behind Thanksgiving Day.

Q. That was behind Thanksgiving Day?

A. Yes, sir.

Q. Before or after Thanksgiving, Jim?

A. This here was before Thanksgiving.

Q. Haven't you said half a dozen times that you watched in September, and that was after Thanksgiving? Haven't you told that a dozen times to the jury?

A. I said it was after Thanksgiving.

Q. Yes?

A. Well, September is after Thanksgiving.

Q. Your understanding is that it was after Thanksgiving?

A. Yes, sir, it was after Thanksgiving.

Q. So that it was in September, after Thanksgiving?

A. Yes, sir.

Q. That is correct, now, Jim?

A. Yes, sir, after Thanksgiving.

Q. Yes, that is right. Well now, that day, Mr. Darley was there that day?

A. Yes, sir, I remember seeing him there that day.

Q. Was Mr. Schiff there?

A. Yes, sir, Mr. Schiff was there that day.

Q. What time did Mr. Darley leave

A. I don't know what time he left.

Q. What time did Mr. Schiff leave?

A. I don't know what time he left.

Q. What time did Mr. Holloway leave?

A. Mr. Holloway left away from there about half past two.

Q. Do you remember that?

A. Yes, sir, I can remember that.

Q. How can you remember when Mr. Holloway left and yet don't remember when anybody else left?

A. I can always remember when he leaves, because you always have to tell him when you have to leave out and how long you are going to stay.

Q. You tell him when you are going to leave, and how long you are going to stay?

A. I didn't tell him that time, because I was going to work that evening.

Q. The next time, did you tell him you were going to ring out?

A. No, sir, I didn't tell him that I was going to ring out.

Q. The next time, did you tell him?

A. No, sir, I just told him I was going to work.

Q. If you never told him that you were going to ring out, how do you remember when he left?

A. Because I will tell you, if I didn't have any other work to do I would go down to the first floor and sit on a box and go to smoking, and he worked down there.

Q. And you didn't tell him when you were going to ring out?

A. No, sir. I didn't tell him when I was going to ring out.

Q. Therefore, your ringing out had nothing to do with when he left, because you never told him?

A. No, sir, I never told him that.

Q. You never told him anything about it? Well, now, in September, after Thanksgiving, was Mr. Darley there that day?

A. Yes, sir, I remember seeing Mr. Darley that day.

Q. Was Mr. Schiff there that day?

A. Yes, sir, I remember seeing him there.

Q. What time did Mr. Holloway leave?

A. Mr. Holloway left away from there about two o'clock.

Q. The next time you watched was right after Christmas?

A. No, sir, the next time I watched was Thanksgiving Day, then—

Q. You said awhile ago September was after Thanksgiving?

A. Yes, sir, after Thanksgiving day.

Q. All right. Well, now, Thanksgiving Day, the day you have told about in January, who did you see there in January, I mean who of the force?

A. I disremember now who I did see in January when I was there that morning.

Q. You disremember?

A. Yes, sir, I disremember.

Q. Can you remember anybody you saw there?

A. Nobody I saw there at all. Mr. Holloway, I can remember.

Q. Jim, isn't it true that on every Saturday morning, a number of people come there to that factory always?

A. Well, I don't know, I couldn't tell; nobody but just them that worked there.

Q. The first you watched, tell us anybody that come there that day?

A. I couldn't remember that; I couldn't tell you.

Q. You don't know about that?

A. No, sir.

Q. The second time, you don't know whether anybody was working there or not?

A. To my memory, I think there were some young ladies working up on the fourth floor.

Q. Some ladies working there that evening up on the four floor?

A. Yes, sir.

Q. That is your memory about the second time?

A. Yes, sir.

Q. Then, the third time, was anybody working there that evening, Saturday evening?

A. I don't know about the third time.

Q. You don't remember whether there were some young ladies working up there that evening?

A. No, sir, I don't know about the third time.

Q. You can't remember about that?

A. No, sir.

Q. Well now, Thanksgiving, do you know whether anybody was working there Thanksgiving evening?

A. No, sir, I don't know whether anybody was working there Thanksgiving evening or not.

Q. You don't know whether Mr. Schiff worked there that evening?

A. No, sir, I don't know whether Mr. Schiff worked that evening or not.

Q. You can't remember that, can you?

A. I didn't see Mr. Schiff at all.

Q. You can't remember whether he was there or not?

A. No, sir.

Q. You wouldn't swear that he was not there?

A. I will swear I didn't see him; I will swear he wasn't in the office with Mr. Frank.

Q. You swear to that?

A. Yes, sir.

Q. Will you swear he wasn't there that day?

A. I will swear Mr. Irby was working in the office.

Q. Thanksgiving Day?

A. No, sir, he wasn't working in the office on Thanksgiving.

Q. The next time, was there any ladies working on the fourth floor?

A. I don't remember.

Q. You don't remember whether there were or not?

A. No, sir.

Q. You can't remember that?

A. No, sir.

Q. They might have been?

A. I didn't see none of them there.

Q. You didn't see them?

A. No, sir.

Q. You only saw them working there one day?

A. I saw them working there the second evening.

Q. On the fourth floor. . . .

Q. Did you say anything about it? Do you think that you told about watching for Frank at that time. You think you told that at that time?

A. I don't know where I told them at that very time.

Q. Didn't you say that you did?

A. No, sir.

Q. That's your opinion that you did?

A. I aint got no opinion about it.

Q. Well, that's your best recollection that you did?

A. No, sir, it's not my best recollection.

Q. Well, what is your best recollection, that you didn't then?

A. What do you mean by that.

Q. Did you or did you not?

A. I don't know, sir. I'm telling you the truth.

Q. Well, he had already had that signal about stamping and whistling a long time. What did he give it to you over again for?

A. He told me that Thanksgiving, but didn't do it until I set then on the box.

Q. Didn't you say he always gave you that signal?

A. No, sir. I didn't say he always gave me that signal.

Q. Gave it to you Thanksgiving?

A. Yes, sir.

Q. And repeated it to you that day again?

A. Yes, sir.

The witness Conley was examined by the solicitor, who brought out the direct questions and answers Supra, and was then cross-examined by the defendant, when counsel brought out the cross-questions and answers Supra.

Thereafter, and while the witness Conley was still on the stand, Defendant's Counsel moved to rule out, exclude, and withdraw from the jury each and all of said questions and answers, upon the grounds stated at the time said motion was made that said questions and answers were irrelevant, immaterial, prejudicial, and dealt with other matters and things irrelevant and disconnected with the issues in the case.

The Court denied this motion in writing, making in so doing the following order:

> "When the witness Conley was still on the stand his testimony not having been finished, the defendant, by his attorneys, moved to rule out, withdraw and exclude from the jury each and all the above questions and answers, because the same are irrelevant, immaterial, prejudicial, and deals with other matters and things irrelevant and disconnected with the issues of this case. After hearing argument of counsel, the Court overruled the motion to rule out, withdraw or exclude said above stated questions and answers from the jury, but permitted the same to remain before the jury."

In making said order and declining to rule out, exclude and withdraw said questions, and each of them, as well as all of the answers and each of them, the Court erred, for the reason that said questions and answers, each and all of them, were irrelevant, immaterial, illegal, prejudicial, and dealt with other matters and things wholly disconnected with the issues on trial, and the same amounted to accusing the defendant of other and independent crimes.

Defendant contends that this ruling of the Court was highly prejudicial to the defendant, tending to disgrace him before the jury and expose him to a conviction, not because he had committed murder, but because he was accussed of depravity and degeneracy.

When the third of the direct questions here sought to be excluded was asked by the solicitor the defendant objected because the evidence sought would be immaterial. The Court sustained the objection but the solicitor continued with the balance of the direct questions and answers here objected to and the cross-questions were thereafter asked and the answers given. The Court therefore erred in not excluding and withdrawing all of said testimony.

14. Because the Court erred in not ruling out, excluding, and withdrawing the following evidence direct and cross of the witness Conley, upon motion of defendant's counsel, made while Conley was still on the stand.

> "I always stayed on the first floor like I stayed April 26th and watched for Mr. Frank while he and a young lady would be up on the second floor chatting. I don't know what they were doing; he only told me they wanted to chat. When the young ladies would come there, I would sit down at the first floor and watch the door for him. I watched for him several times. There will be one lady for Mr. Frank and one lady for another young man who was there. Mr. Frank was there along on Thanksgiving Day. I watched for him several times. A tall, heavy built lady come there that day. He told me when the lady came he would stamp and let me know that was the lady, and for me to go and lock the door. Well, the lady came, and he stamped, and I locked the door. He told me when he got through with the lady he would whistle for me to go and unlock the door. . . . And he says: (on April 26th) 'Now, when the lady comes, I will stamp like I did before' . . . I have seen Mr. Frank there in the office two or three times before Thanksgiving, and a lady was in the office, and she was sitting down in a chair and she had her clothes up to here, and he was down on his knees, and she had her hands on him. I have also seen Mr. Frank another time with a young lady lying on the table. She was on the edge of the table. I don't know the name of the woman that was there Thanksgiving Day; the man that was there was Mr. Dalton. . . . The lady that was there was a tall built lady, heavy

weight, she was nice looking, had on a blue looking dress with white dots in it, had on a greyish looking coat with kind of tails on it, white slippers and white stockings.

CROSS EXAMINATION.

"The first time I watched for Mr. Frank was sometime during last summer, about in July. I would be there sweeping and Mr. Frank come out and called me in the office. That was on a Saturday, about three o'clock. As to what Mr. Dalton would do, the young lady that worked at the factory would go out and get him and bring him back there. That was Mr. Dalton's lady. The lady that was with Mr. Frank was Miss Daisy Hopkins. She worked up there on the fourth floor. When Mr. Frank called me, there was a lady in the office with him. He talked to me in the lady's presence. She was Miss Daisy Hopkins. That was three or half past three. He would say: 'Did you see that lady go out there? You go down and see nobody don't come up here and you will have a chance to make some money.' One lady had already gone on out to get that young man, and the other lady was present. She came back after a while and brought Mr. Dalton with her. They walked into Mr. Frank's office and stayed there ten or fifteen minutes, came back down, and she says: 'All right, James,' and I says: 'All right;' and I would go back there to the trap door that leads down to the basement, and I pulled up the trap door, and they went down there. I opened the door because she said she was ready; I knowed where she was going. Mr. Frank told me to watch; he told me where they were going. I don't know how long they stayed there; I don't know what time they came back, but they came back after a while, the same way they came down. I kept the doors shut—not locked—all the time, and never left it. Mr. Dalton gave me a quarter and went out laughing, and the lady went up the steps. She didn't stay very long and came down, and after that Mr. Frank came down and left. That was about half past four. I left before Mr. Frank did. He gave me a quarter. That was the first Saturday. The next Saturday was about two weeks after that, about the last of July or the first of August. He told me the same Saturday that I was there: 'Now, you know what you done for me last Saturday. I want to put you wise this Saturday.' I says: 'All right, what time?' He says: 'Oh, about half past.' He got back from lunch about a quarter past two, then Mr. Holloway left, and then Miss Daisy Hopkins came into his office. Mr. Frank came out, popped his fingers and bowed to me—bowed his head to me, and then went back in the office. Then, I went down and stood by the door. I didn't lock it; I shut it. I don't know what happened next; I didn't hear him come out of his office at all. Then I went down and watched. No, I didn't hear her come out of his office. Mr. Frank stayed there about a half an hour that day, then the girl went out. He gave me a half a dollar, this time. The next time I watched for him was before Thanksgiving Day, sometime in the winter, about the last part of August. When he told me he wanted me to watch for him that time, it was on the fourth floor, right at the elevator. Snowball was standing there then. Mr. Frank says: 'I want to put you wise again for to-day.' He came back about half past two, and he says: 'She will be here in a minute.' The lady that came in was one that worked on the fourth floor. I don't know her name. It wasn't Miss Daisy Hopkins. She had hair like Mr. Hooper's, grey haired. She had a green suit of clothes. She went to Mr. Frank's office, and then I watched. I didn't hear them leave Mr. Frank's office. Then she came out, and then he came out and went out the factory, and then he came back. I stayed there waiting for him. He said: 'I didn't take out that money.' I says: 'I seed you didn't.' He said: 'That's all right, old boy, I don't want you to have anything to say to Mr. Herbert or Mr. Darley about what's going on around here.' The next time I watched was Thanksgiving day. I met Mr. Frank there about eight o'clock in the morning. He says: 'A lady will be here in a little while; me and her are going to chat. I don't want you to do no work; I just want you to watch.' The lady came in about a half an hour. I didn't know her; I have never seen her working at the factory. I had seen her at the factory two or three nights before Thanksgiving Day in Mr. Frank's office about eight o'clock. She was a nice looking lady. I think she had on black clothes. She was a very tall, heavy built lady. The front door was open when she came Thanksgiving Day. She went up stairs and went in Mr. Frank's office. Mr. Frank came out and stamped right above the trash barrel. I was down stairs about the trash barrel. He told me he was going to stamp two times; then he stamped, and I closed the door, and then I came back and sat on the box about an hour and a half. Mr. Frank says: 'I'll stamp after this lady comes, and you go and shut the door and turn that night latch.' That's the first time he told me to lock the door, and he says: 'If everything is all right, you take and kick against the door.' And I kicked against the door. I stayed there about an hour and a half that time. Then, Mr. Frank came down and unlocked the front door, looked up the street, and then went back and told the lady to come down. She came down and said to Mr. Frank, while they were walking: 'Is that the nigger?' and he says: 'Yes.' And she says: 'Well, does he talk much?' and he says: 'He's the best nigger I've ever seen.' They went on out together; Mr. Frank came back. I went in his office. He gave me a $1.25. The lady had on a blue skirt with white dots in it, and white slippers and white stockings, and a grey tailor-made coat with pieces of black velvet on the edges of it, and a black hat with big black feathers over. The next time I watched for him was a Saturday in January, right after the first of the year. He said there will be a young man and two ladies that would be there that Saturday morning. I was standing by the side of Gordon Bailey on the elevator when he come and told me that about half past seven in the morning, and he said I could make some money off this man. Gordon Bailey and me was on the elevator together. He could hear what Mr. Frank was saying. I got through cleaning at about a quarter after two and stayed at the door. It was open, and the ladies came about half past two or three o'clock, and the young man came in and says: 'Mr. Frank put you wise?' 'Didn't he tell you to watch the door, two ladies and a young man would be there?' He said: 'Well, I'm the one.' Then he come and told the ladies to come on, and they went up stairs towards the clock; they stayed there about two hours. I didn't know either of the ladies. I don't know what they had on. The man was tall, slim built, heavy man; he didn't work there. I seen him talking to Mr. Holloway frequently during the week. That's the last time I watched for him. Snowball and I were in the box room when he told me to watch for him that time. I don't know if he knew Snowball was there or not. The day before Thanksgiving, when he talked to Snowball, we were on the elevator. Snowball could have heard anything that was said; Mr. Frank saw Snowball standing there. . . . Miss Daisy Hopkins worked at the factory from June, 1912, until Christmas. I worked on the same floor with her. I am sure she worked there from June until about Christmas. She was a low lady, kind of heavy; she was pretty, chunky, kind of heavy weight. I remember that she was there in June because I took a note to Mr. Herbert Schiff which she gave me. Mr. Schiff said it had June on it, when he read it. It was on the outside of the note. I looked and seen something on it; I don't know what it was. It was on the back of the note—June something, and he laugheed at it. I know

Miss Daisy Hopkins left at Christmas, because Mr. Dalton told me that she wasn't coming back. It was one Saturday. Mr. Dalton was a slim looking man and tall, with thick eye lashes, black hair, light complected, weighed about 135 pounds, about thirty-five years old. I seen him around the factory several times. The first time was somewhere along in July, when he come in there with a lady. About two weeks after that, I met him at the door, about the last of August. The next time was just about Thanksgiving Day. Then I saw him after Christmas when he come there with a lady. Him and the lady was down in the basement. I don't know who she was. Last time I saw him was down at the station house. The detectives brought him down there. First Saturday I watched for Mr. Frank, I saw Mr. Holloway there; he left about half past two. I saw Mr. Darley that morning; don't know what time he left. The next Saturday I watched Mr. Holloway wasn't there; he was sick. That was about the last of July or first of August. The next time I watched, about the last of August, I saw Mr. Holloway. He left about two o'clock. The day I watched for him in September, after Thanksgiving Day, I saw Mr. Holloway leave about half past two. Schiff and Darley were there. I disremember who I saw there in January, except Mr. Holloway. Sometimes some of the girls worked there on Saturdays. Don't remember any girls that worked there on the first Saturday that I watched. The second time I watched, I think some ladies were working up on the fourth floor. I don't know about the third time, and I don't know whether anybody was working there Thanksgiving afternoon or not. I didn't see Mr. Schiff at all that day. I will swear he wasn't in Mr. Frank's office that day. I don't remember whether any ladies worked there the other times I was watching, or not. . . . I don't know whether I told them (detectives) about watching for Frank at that time. I haven't got any opinion about it. I haven't got any recollection. He told me about stamping and whistling on Thanksgiving Day, but didn't do it until I set then on the box."

Conley had testified both on direct and had been cross examined for a day and a half on other subjects, as above set out, and while on the stand and after testifying as above set out, counsel for defendant moved to rule out, exclude and withdraw each and every part of the evidence given by the witness as to all transactions had between Frank and other women at other times than on the day of the alleged murder, upon the grounds, made at the time, that evidence of such transactions was irrelevant, immaterial, illegal, prejudicial, and dealt with other matters and things irrelevant to and disconnected with the issues on trial, and the same amounted to accusing the defendant of other and independent crimes.

The evidence next above set out was, and is, all the evidence given by Conley dealing with Frank's transactions with women at other times than on the day of the murder, and was the evidence sought to be ruled out, excluded, and withdrawn from the consideration of the jury.

The Court declined, upon the motion made and for the reasons argued, to rule out, exclude and withdraw such evidence from the jury but left the jury free to consider the same.

The ruling of the Court was, and is, erroneous, for the reasons alleged above, and the Court erred in not granting the order asked, ruling out, excluding, and withdrawing such evidence from the jury.

When the solicitor first sought from the witness Conley the evidence here sought to be excluded the defendant objected because the evidence sought to be brought out would be immaterial. The Court ruled that such evidence would be immaterial, but after this ruling the solicitor brought out the direct testimony here sought to be ruled out and excluded. After the direct testimony supra had been brought out after the Court's ruling, the cross testimony supra here sought to be withdrawn was also brought out in an effort to modify or explain the direct evidence. Under the circumstances the Court ought to have granted the motion to exclude and withdraw all such evidence and for failing to do so committed error.

Movant assigns as error the action of the Court in allowing this evidence to go before the jury because the same was illegal, irrelevant, immaterial and hurtful to the defendant.

15. Because the Court permitted, over the objection of defendant's counsel made when the evidence was offered, that such evidence was irrelevant and immaterial, the witness Conley to swear that the police officers took him down to the jail, and to the door where Frank was, but that he never saw Frank at jail and had no conversation with him there.

The Court erred in permitting the introduction of this evidence, for the reasons above stated. It was hurtful for the reason that the solicitor contended, in his address to the jury, that Frank declined to see Conley, and that such declination was evidence of his guilt.

16. Because the Court, over objection of the defendant, made at the time the evidence was offered, that the same was irrelevant, immaterial, and not binding on Frank, permitted the witness, Mrs. White, to testify that Arthur White, her husband, and Campbell are both connected with the Pencil Company, and that she never reported seeing the negro on April 26th, 1913, which she testified she did see, in the pencil factory, to the City detectives until May the 7th, 1913.

For the reasons above stated, the Court erred in not excluding the evidence, and for the reason that the solicitor, in his address to the jury, contended that the fact that there was a negro (which he contended was Conley) in the factory the morning of April 26th was concealed from the authorities, and that such concealment was evidence of Frank's guilt.

17. Because the Court permitted, over the objection of defendant's counsel made when the same was offered, that the same was irrelevant and immaterial, the witness Mangum, to testify that Conley and another party went down from the pencil factory to the jail, that he had a conversation with Mr. Frank about confronting Conley, Frank then being on the fourth floor of the jail; that Chief Beavers, Chief Lanford, and Mr. Scott, with Conley, came to the jail to see Frank, and they asked him if they could see him; that he said: "I will go and see; and, if he is willing, it is all right;" that he went to Frank

and said: "Mr. Frank, Chief Beavers, Chief Lanford and Scott and Conley want to talk with you, if you want to see them;" that Frank said: "No, my attorney is not here, and I have got nobody to defend me;" that his lawyer was not there, and that no one was there to listen to what might be said.

The Court erred in admitting this evidence for the reasons above stated.

The solicitor in his agument pressed on the jury that the failure of Frank to face this negro and the detectives was evidence of guilt, and movant contends same was prejudicial.

18. Because the Court erred in permitting the witness, Dr. H. F. Harris, over the objection of the defendant, made at the time the testimony was offered that the same was irrelevant and immaterial, to testify:

> "I might preface my remarks on this by saying that more than 12 or 15 years ago someone told me that the reason that cabbage was considered indigestible was because they were ordinarily cooked with meat or grease, and with the idea of settling this question, on my clinic I got a lot of patients whose stomachs were not in very good condition, and made a number of experiments particularly to determine the matter as to whether or not this was the case. During the course of the experiment that I made at that time, I was struck by the fact that the behaviour of the stomach after taking a small meal of cabbage and bread, either cornbread or biscuit,—that the behaviour of the stomach was practically the same as after taking some biscuit and some water alone.
>
> "I discovered, as I say, at that time, that our ideas about how quickly cabbage digested were rather erroneous, and as I remarked a moment ago, I observed that the stomach freed itself of a mixture of cabbage and bread just about as quickly as we only gave bread alone; the amount of recovery on the part of the mucuous membrane in the way of sufficient gastric juices was about the same practically or probably a little bit more recovery with cabbage.
>
> "It is the only way I can get at it, it is the only real knowledge I have on the subject in connection with the work that was done in this particular instance here."

The witness Harris testified that from the state of digestion of the food found in the stomach of Mary Phagan he could say she died in 30 or 40 minutes after her last meal of bread and cabbage, over the objection above made and the further objection that the witness could not give the result of other and different experiments made 12 or 15 years ago upon persons "whose stomachs were not in a very good condition," and not under the same circumstances and conditions, to sustain and bolster up the experiment made upon the stomach of Mary Phagan, and to sustain his assertion that Mary Phagan died from 30 to 40 minutes after she ate her last meal.

The Court overruled the objection and admitted the testimony and in doing so, the court for the reasons indicated, committed prejudicial error.

19. Because the court erred in permitting the witness, Dr. H. F. Harris, to testify, over the objection of the defendant made when the evidence was submitted, that the same was irrelevant and immaterial and that experts could

not give to sustain their opinions individual and isolated experiments but must answer from their knowledge of the science obtained from all sources, that . .

"Knowing the facts that cabbage would pass out of the stomach very quickly in a normal one, I ascertained her digestion, and as soon as I saw the cabbage in this case, I at once felt certain that this girl either came to her death or possibly the blow on her head at any rate, a very short time, perhaps three quarters of an hour of half an hour or forty minutes, or something like that, before death occurred. I then began a number of experiments with some gentlemen who had normal stomachs with a view of judging of the time.

"I had the mother of the girl to cook some cabbage, and it was given to people with absolutely normal stomachs; that I know from investigations of their stomachs.

"I will state in general terms there were only four persons experimented upon, and two of them were experimented upon twice in this connection, and in every single instance the effect on the cabbage was practically the same, that is, it was almost entirely digested, notwithstanding the fact that I had those men given some pieces just as large as were found in Mary Phagan's stomach, and I took pains to see to it that they did not chew this cabbage, but they ate it very rapidly, in three or four minutes, gulped it down, so that we would have as nearly as possible the conditions that I was certain existed at the time Mary Phagan ate her last meal. The result of this, you gentlemen have seen."

(The witness here was permitted over the objection as above stated, to exhibit several small glass jars containing what purported to be partly digested cabbage, resulting from experiments made.)

"Now I know from my observations of the cases that I present here that the digestion of these persons was normal. I did not make a microscopic examination of the stomachs of the gentlemen experimented upon, but I made an examination of their stomachs to see how they secrete their food, which is the only way we can tell. You can take the fluids and tell whether the stomach is normal, it is the only way we possess.

"I merely wish to call attention to the fact that I made experiments which varied in the time that the contents were in the person's stomach, from 38 minutes, which was the time the contents were in the stomach of the boy 14 years of age, to 70 minutes, in another one of my cases, and the results indicated in every instance, from 38 to 70 minutes, in every single instance, the cabbage was practically digested, practically altogether so."

Over objections made as is above stated, the Court permitted this testimony to go to the jury and in doing so committed prejudicial error. Experts can testify from the given state of any science, but can not explain the process or results of particular experiments made by themselves.

20. Because the Court permitted the witness Harris to testify as follows:

"I wish to say that I made a microscopic examination of those contents of the stomachs, and while I found in Mary Phagan's case, except in the case of particles of cabbage that were chewed up too small to give sufficient indication, the cabbage that was in the stomach gives every indication of having been introduced into it within three quarters of an hour; the microscopic examination showed plainly that it had not begun to dissolve, or at least, only a very slight degree, and it indicated that the process of digestion had not gone on to any extent at the time this girl was rendered unconscious at any rate. I wish further to state that on examining Mary Phagan's stomach I found that the starch she had eaten had undergone practically no alteration; there were a few of the starch cells which showed the beginning of the process of digestion, having changed into the substance called erthro-dextrine, but these were very much rarer than is the case in a normal stomach where the contents are exposed to the actions of the digestive fluids for something like, say 50 or 60 minutes. The contents taken from the little girl's stomach were examined chemically, and the result of the chemical examination showed that there were only slight traces of the first action of the digestive juices on the starch, thus confirming my microscopic examination, and showed clearly that only the very beginning of digestion had proceeded in this case.

"As I was saying, of even greater importance in this matter, it was found that there were 160 cubical solids, or about five and a half ounces of total contents remaining in the stomach, and after an ordinary meal of cabbage and bread, this is not the case. Under ordinary conditions, we get out perhaps on an average of something like anywhere from 50 to 60 or 70 cubic centimeters, or, say from a half to a third of what was found in this case, and it was plainly evident that none of this material had gone into the small intestine, because that was examined for it from the mouth out to the beginning of the large intestine, which is many feet away from it in the neighborhood of something like 25 feet away, and there was very, very little food found in the small intestine, none at all, as a fact, in the small intestine, which showed clearly, as I have said, that the contents of the stomach had not begun to be pushed on into the small intestine at the time that death occurred. This pushing on begins in about half an hour after such a meal as this, and by the time an hour is reached, the greater part of what is introduced into the stomach is already down in the small intestine, so that it becomes very clear from this that digestion had not proceeded to any extent at all."

The above testimony of Dr. Harris was objected to when offered because the same was argumentative. It was not, as movant contends, a statement of fact, scientific or otherwise, from which the jury could for themselves draw conclusions, but was a mixture of facts and arguments.

The Court declined to rule out this testimony, and declined to force the witness to abtstain from arguments and state the facts. This argument of the witness was clearly prejudicial to the defendant and failure to rule out the testimony was error.

21. Because, the Court permitted the witness C. B. Dalton to testify over the objection of defendant, made when the evidence was offered and before cross examination, that the testimony was irrelevant, incompetent, immaterial and illegal, dealt with other matters than the issues on trial and was prejudicial to the defendant's case; that he knew Leo Frank, visited the National Pencil Co.'s plant and saw Frank there four or five times; that he was in the office of Leo Frank, that he has been there three or four times with Miss Daisy Hopkins, and at these times Frank was in his office; that the witness had been in the basement, going down the ladder, that Frank knew he was in the building, but does not know whether Frank knew he was

in the basement; that he saw Conley there when he went there; that sometimes when he saw him in his office there would be ladies there, sometimes there would be two and sometimes one; he did not know how often he saw Conley there, but sometimes he would give him a quarter, that he did that a half dozen or more times; that he went to the factory about once a week for a half dozen weeks, that he saw Frank there in the evenings and in the day times; sometimes he would see cold drinks in the office, Coca-Cola, lemon limes, etc., that sometimes he saw beer in the office, that he never saw ladies there when beer and cold drinks were there do anything and never saw them do any writing.

The Court permitted this testimony of Dalton to be heard over the objections made as aforesaid and for such reason committed error.

This evidence was peculiarly prejudicial to the defendant because the solicitor insisted, in his argument, that in addition to being independent testimony looking to the same end, that it corroborated the testimony of Conley as to immoral conduct on the part of Frank.

22. Because the Court permitted the witness C. B. Dalton to be asked the following questions and make the following answers, over the objection of the defendant made at the time the evidence was offered, and before cross examination, that the testimony was irrevelant, incompetent, immaterial, and illegal, dealt with other matters and things than the issues of the trial, was prejudicial to the defendant.

Q. Mr. Dalton, have you ever worked at the pencil factory?
A. No, sir.
Q. Do you know Leo M. Frank?
A. Yes, sir.
Q. Do you know Daisy Hopkins?
A. Yes, sir.
Q. Do you know Jim Conley?
A. Yes, sir.
Q. Have you ever visited the National Pencil Factory?
A. Yes, sir; I have been there some.
Q. How many times?
A. I don't know; three, or four, or five times.
Q. Were you ever in the office of Leo M. Frank?
A. Yes, sir.
Q. On what occasion?
A. I have been there two or three times with Miss Daisy.
Q. Where was Frank when you were there?
A. He was in the office; I don't know whose office it was, but he was in the office.
Q. Were you ever down in the basement?
A. Yes, sir.
Q. What part of the basement did you visit? Can you tell me on that diagram (indicating)?
A. I have been down that ladder.

Q. (Looked at No. 12). Did Frank have any knowledge of your business down there?

A. I don't know; he knowed I was in the basement; he knowed I was there.

Q. Was Conley there when you were there?

A. Yes, sir; I seen Conley there, and the night-watchman, too—he wasn't Conley.

Q. At the time you saw Frank there was anybody else in the office with him?

A. Yes, sir; there would be some ladies there; sometimes two and sometimes one, maybe they didn't work in the morning and would be there in the evening.

Q. How many times did you pay Jim Conley anything?

A. I don't know.

Q. About?

A. Gave him a quarter when I was going in sometimes; I expect I gave him a half dozen or more—about every week.

Q. What time of day or night was it that you saw Mr. Frank in his office?

A. It was in the evening—in the day time, sorter.

Q. What, if anything, would he have up there at the time?

A. Sometimes he would have cool drinks.

Q. What kind of drinks?

A. Coca-Cola, lemon lime, or something of that sort.

Q. What else?

A. Some beer, sometimes.

Q. Some beer?

A. Yes, sir.

Q. Were those ladies doing any stenographic work up there?

A. I never seed them doing any writing. I never stayed there long, but I never seed them doing any writing.

Q. You never saw anything of that kind going on?

A. No, sir.

The Court permitted these questions and answers to be heard by the jury, over the objection of the defendant, aforesaid, and committed error, for the reasons aforesaid. His evidence was particularly prejudicial to the defendant, because the solicitor insisted in his argument that it corroborated the testimony of Conley as to immoral conduct on the part of Frank.

The Court erred for the reasons above stated in not ruling out and excluding from the jury each and all of the above questions and answers.

23. Because the Court permitted, over the defendant's objection, made when the testimony was offered, that it was illegal, immaterial, and because it could not be binding on the defendant, the witness S. L. Rosser, to testify that since April 26, 1913, he had been engaged in connection with this case; that he visited Mrs. Arthur White subsequent to April 26; that the first time the witness ever claimed to have seen the negro at the factory when she went into the factory on April 26th, was some time about the 6th or 7th of May.

The Court, over objections as stated, admitted the testimony just above, and in doing so erred, for the reasons herein stated.

This was particularly prejudicial to the defendant, because the solicitor contended in his argument to the jury that the fact that factory employees did not disclose the fact that Mrs. White saw the negro on April 26th, was evidence that the defendant was seeking to suppress testimony material to the discovery of the murderer.

24. Because, during the trial, and on August 6, 1913, pending the motion of defendant's counsel to rule out the testimony of the witness Conley tending to show acts of perversion on the part of the defendant and acts of immorality wholly disconnected with and disassociated from this crime. (Such evidence being set out and described in grounds 13 and 14 of this motion.)

The Court declined to rule out said testimony, and immediately upon the statement of the Court that he would let such testimony remain in evidence before the jury, there was instant, pronounced and continuous applause throughout the crowded court room wherein the trial was being had, by clapping of hands and by stamping of feet upon the floor.

The jury was not then in the same room wherein the trial was being had, but in an adjacent room not more that fifty feet from where the judge was sitting and not more than fifteen or twenty feet from portions of the crowd applauding, and so close to the crowd, in the opinion of the Court, as to probably hear the applauding.

Immediately upon said applauding the defendant's counsel moved the Court for a mistrial of the cause; and, upon the announcement of the Court that he would not grant a mistrial, moved the Court to clear the Court-room, so that other demonstrations could not be had.

The Court refused to grant a mistrial and declined to clear the court-room.

In refusing a mistrial and in declining to clear the court-room, the Court erred. The passion and prejudice of those in the crowded court-room were so much aroused against the defendant, as contended by counsel for the defendant, that he could not obtain a fair and impartial trial.

The Court, as movant contends, also erred in not clearing the court-room of the disorderly crowd, but left them in the court-room, where their very presence was a menace to the jury.

It is true that the Court did threaten that upon a repitition of such disorder he would clear the court-room, but such a threat, as movant contends, was wholly inadequate, as evidenced by the fact that during the same day of the trial, while the witness Harris was upon the stand, the crowd laughed jeeringly when Mr. Arnold, one of the defendant's counsel, objected to a comment of the solicitor, and that, too, in the presence of the jury.

And again, during the trial, when Mr. Arnold, one of the defendant's counsel, objected to a question asked, the following colloquy took place:

Mr. Arnold: "I object to that your Honor; that is, entering the orders on that book merely; that is not the question he is asking now at all.

The Court: "What is the question he is asking now?" (Referring to questions asked by the Solicitor-General.)

Mr. Arnold: "He is asking how long it took to do all this work connected with it." (Referring to work done by Frank the day of the murder.)

The Court: "Well, he knows what he is asking him."

Upon this suggestion of the Court, that the Solicitor knew what he was doing, the spectators in the court-room applauded, creating quite a demonstration.

Mr. Arnold again complained of the conduct of the spectators in the court-room. The Court gave no relief, except directing the Sheriff to find out who was making the noise, to which the Sheriff replied that he could maintain order only by clearing the court-room.

25. Because the Court erred in admitting, over the defendant's objection, made at the time the testimony was offered, that it was illegal, immaterial and irrelevant, the introduction of certain glass bottles containing partly digested cabbage, which resulted from tests made on other parties by the witness, Dr. Harris, wherein the cabbage which he claimed to be cooked the same as was the cabbage eaten by Mary Phagan, after it had remained in the stomach of such other parties from 30 to 50 minutes were taken out by means of a stomach pump.

The purpose of these experiments was to show the state of digestion of this cabbage in comparison with the state of digestion of the cabbage taken from the stomach of Mary Phagan, so as to sustain the contention of the State that Mary Phagan was killed within 30 or 40 minutes after eating the cabbage and bread.

The Court admitted these samples of partly digested cabbage taken from the stomach of others, as aforesaid, and in doing so, committed error for the reasons above stated, and for the further reason that there was no evidence, as the defendant's counsel contend, that the same circumstances and conditions surrounded these other parties in the eating and digestion of the cabbage as surrounded Mary Phagan in the eating and digestion on her part and no evidence that the stomachs of these other parties were in the same condition as was Mary Phagan's.

26. Because the Court, in permitting the witness, Harry Scott, to testify over the objection of defendant, made at the time the testimony was offered, that same was irrelevant, immaterial and not binding upon the defendant, that he did not get any information from anyone connected with the National Pencil Company that the negro Conley could write, but that he got his information as to that from entirely outside sources, and wholly disconnected with the National Pencil Company.

The Court permitted this testimony to be given over the objections above stated, and in doing so, for the reasons therein stated, committed error.

This was prejudicial to the defendant, because the negro Conley at first denied his ability to write and the discovery that he could write was as the State contended, the first step towards connecting Conley with the crime, and the Solicitor contended in his argument to the jury that the fact that the Pencil Company authorities knew Conley could write and did not disclose that to the State authorities, was a circumstance going to show the guilt of Frank.

27. Because the Court permitted the witness, Harry Scott, to testify over the objection of defendant's counsel, made when the testimony was offered, that the same was irrelevant, immaterial, illegal and not binding on the defendant, that the witness first communicated Mrs. White's statements about seeing a negro on the street floor of the pencil factory on April 26, 1913, to Black, Chief Lanford, and Bass Rosser, that the information was given to the detectives on April 28th.

The Court, over the defendant's objections, permitted the above testimony to be given, and in doing so erred for the reasons above stated. This was prejudicial to the defendant, because it was contended by the State that this witness, Harry Scott, who was one of the Pinkerton detectives who had been employed to ferret out the crime, by Frank acting for the National Pencil Company, had not promptly informed the officials about the fact of Mrs. White's seeing this negro and that such failure was evidence pointing to the guilt of Frank.

This witness was one of the investigators for the Pinkerton Detective Agency, who was employed by Frank acting for the National Pencil Company to ferret out this crime.

28. Because the Court permitted Harry Scott, a witness for the State, to testify over the objection of the defendant, made at the time that same was offered, that the same was irrelevant, immaterial, illegal and prejudicial to the defendant; that the witness, in company with Jim Conley, went to the jail and made an effort to see Frank. And that after Conley made his last statement (the statement about writing the notes on Saturday) Chief Beavers, Chief Lanford and the witness went to the jail for the purpose of confronting Frank. That Conley went with them; that they saw the Sheriff and explained their mission to him and the Sheriff went to Frank's cell; that the witness saw Frank at the jail on May 3rd (Saturday), and that Frank refused to see Conley only through Sheriff Mangum; that was all.

The Court, in admitting this testimony over the objections made, erred for the reasons stated above. This was error prejudicial to the defendant, because the witness Mangum, over the defendant's objection, had already been allowed to testify that Frank declined to see Chief Lanford, Chief Beavers, the witness and Conley, except with the consent of his counsel or with his counsel; and the Solicitor in his argument asserted that the failure of Frank to see the witness while he was employed by the Pencil Company to ferret out the crime in the presence of the negro and the two chiefs, was strong evidence of his guilt.

29. Because J. M. Minar, a newspaper reporter for the Atlanta Georgian, was called by the defendant for the purpose of impeaching the witness George

Epps who claimed that on Saturday of the crime he accompanied Mary Phagan from a point on Bellwood Avenue to the center of the city of Atlanta, by showing that on April 27th at the house of Epps, he asked George, together with his sister, when was the last time they saw Mary Phagan. In reply, the sister of Epps said she had seen Epps on the previous Thursday, but the witness Epps said nothing about having come to town with Mary Phagan the day of the murder but did say he had ridden to town with her in the mornings of other days occasionally.

Upon cross examination, over the objection of defendant's counsel made when the cross examination was offered, that the same was irrelevant, immaterial, incompetent, prejudicial to the defendant, and not binding on the defendant, the witness was allowed to testify that he went to the house of Epps in his capacity of reporter; that one Clofine was the City Editor and that the witness was under him and that Clofine was a constant visitor of Frank at the jail.

The Court admitted this testimony over the objections aforesaid and in doing so erred. There was no evidence of any relationship between Frank and Clofine which could show any prejudice or bias in Frank's favor, even by Clofine and certainly none on the part of the witness Miner.

30. Because the Court erred in permitting the witness Schiff, to testify over the objection of defendant made at the time the testimony was offered, that the same was incompetent, irrelevant and immaterial, that it was not Frank's custom to make engagements Friday for Saturday evening, then go off and leave the financial sheet that had to be over at Montag's Monday morning not touched.

The Court permitted this testimony over the objection of defendant and therein erred, for the reasons stated.

This was prejudicial, because it was the contention of the State that Frank, contrary to his usual custom, made an engagement on Friday before the crime to go to the baseball game on Saturday afternoon, leaving the financial sheet unfinished, although such sheet ought to have been prepared on Saturday and sent to Montag's to the general manager of the factory on Monday. The only material issue was what took place Friday and Saturday and it was wholly immaterial as to what his custom previous to that time had been.

31. Because, during the trial the following colloquy took place between the Solicitor and the witness Schiff:

Q. Isn't the dressing room back behind these doors?
A. Yes, it is behind these doors.
Q. That is the fastening of that door, isn't it?
A. Yes.
Q. And isn't the dressing room back there then?
A. That isn't the way it is situated.
Q. It isn't the way it is situated?
A. It is not, no, sir.

Q. Why, Mr. Schiff, if this is the door right here and—

A. Mr. Dorsey I know that factory.

Q. Well, I am trying to get you to tell us if you know it; you have no objection to telling it, have you?

(Here objection was made by defendant's counsel that Schiff had shown no objection to answering the questions of the Solicitor and that such questions as the one next above, which indicated that the witness did object to answering was improper.)

Mr. Dorsey: I have got a right to show the feeling.

The Court: Go on, now, and put your questions.

Mr. Dorsey: Have you any objections to answering the question, Mr. Witness?

A. No, sir; I have not.

These comments of the Solicitor, reflecting upon the witness were objected to and the Court urged to prevent such reflections. This the Court declined to do and allowed the Solicitor to repeat the insinuation that the witness was objecting to answering him.

This was prejudicial error. The witness deserved no such insinuations as were made by the Solicitor and in the absence of the requested relief by the Court, the jury was left to believe that the reflections of the Solicitor were just.

This witness was one of the main leading witnesses for the defendant, and to allow him, movant contends, to be thus unjustly discredited was harmful to the defendant.

32. Because the Court erred in declining to allow the witness Miss Hall to testify that on the morning of April 26th, and before the murder was committed, Mr. Frank called her over the telephone, asking her to come to the pencil factory to do stenographic work, stating at the time he called her that he had so much work to do that it would take him until six o'clock to get it done.

The defendant contends that this testimony was part of the res gestae and ought to have been heard by the Court, and failure to do so committed error.

33. Because, while Philip Chambers, a youth of 15 years of age, and a witness for the defendant, was testifying, the following occurred:

Q. You and Frank were pretty good friends, weren't you?

A. Well, just like a boss ought to be to me.

Q. What was it that Frank tried to get you to do that you told Gantt about several times?

A. I never did complain to Mr. Gantt.

Q. What proposition was it that Mr. Frank made to you and told you he was going to turn you off if you didn't do what he wanted you to?

A. He never made any proposition to me.

Q. Do you deny that you talked to Mr. Gantt and told him about these improper proposals that Frank would make to you and told you that he was going to turn you off unless you did what he wanted you to do?

A. I never did tell Gantt anything of the sort.

(Objection was here made by the defendant that the answer sought would be immaterial.)

The Court: Well, I don't know what it is, ask him the question.

Q. Didn't you tell Gantt the reason why Frank said he was going to turn you off?

A. No, sir.

Q. Didn't Frank tell you he was going to turn you off unless you would permit him to do with you what he wanted to do?

A. No, sir.

Q. No such conversation ever occurred?

A. No, sir.

Q. With J. M. Gantt, the man who was bookkeeper and was turned off there?

A. No, sir, I never told him any such thing.

Q. No such thing ever happened?

A. No, sir.

Mr. Arnold: Before the examination progresses any further, I want to move to rule out the witness said there wasn't any truth in it, but I want to move to rule out the questions and answers in relation to what he said Frank proposed to do to him—right now. I think it is grossly improper and grossly immaterial; the witness says there is no truth in it, but I move to rule it out.

Mr. Dorsey: We are entitled to show the relations existing between this witness and the defendant, your Honor.

Mr. Arnold: We move to rule out as immaterial, illegal and grossly prejudicial and as grossly improper, and the gentleman knows it, or ought to know it, the testimony that I have called your Honor's attention to.

The Court: Well, what do you say to that, Mr. Dorsey? How is this relevant at all over objection?

Mr. Dorsey: We are always entitled to show the connection, the association, the friendship or lack of friendship, the prejudice, bias, or lack of prejudice and bias, of the witness, your Honor. You permitted them, with Conley, to go into all kinds of proposals to test his memory and to test his disposition to tell the truth, etc. Now I want to lay the foundation for the impeachment of this witness by this man Gantt to whom he did make these complaints.

The Court: Well, I rule it all out.

Mr. Arnold: It is the most unfair thing I have ever heard of, to try to inject in here in this illegal way, this kind of evidence; any man ought to know that it is illegal. It has no probative value, and has been brought in here by this miserable negro and I don't think any sane man on earth could believe it. It is vile slander and fatigues the indignation to sit here and hear things like this suggested, things that your Honor and everybody knows are incompetent.

The Court: Well, I sustain your objection.

Mr. Arnold: If the effort is made again, your Honor, I am going to move for a mistrial. No man can get a fair trial with such inuendoes and insinuations as these made against him.

The Court: Have you any further questions, Mr. Dorsey?

Mr. Dorsey: That is all I wanted to ask him. I will bring Gantt in to impeach him.

The Court: Well, I have ruled that all out.

Mr. Dorsey: Well, we will let your Honor rule on Gantt, too.

The assertion by the solicitor that this witness did make the suggested complaints to Gantt, the insinuations involved in the questions of the solicitor that Frank had committed disgraceful and prejudicial acts with the witness and the final assertion of the solicitor when the Court ruled it out that he would introduce Gantt and let the Court rule on Gantt too, was highly prejudicial to the defendant. The Court erred in permitting the solicitor to make the insinuations and to indulge in the threat that he would let the Court rule on Gantt too, in the presence of the jury and without any rebuke on the part of the Court. The Court erred in not formally withdrawing these insinuations and assertions from the jury and in not of his own motion severely rebuking the solicitor for his conduct. The mere ruling out of the testimony was not sufficient. Nothing but a severe rebuke to the Solicitor-General would have taken from the jury the sting of the insinuations and threats of the solicitor.

34. Because, while Mrs. Freeman was on the stand, after testifying as to other things she testified that while she and Miss Hall, on April 26th, were at the restaurant immediately contiguous to the pencil factory, and after they had left the factory at 11:45 o'clock, a. m., and had had lunch, that Lemmie Quinn came in and stated that he had just been up to see Mr. Frank.

Upon motion of the solicitor this statement that he had been up to see Mr. Frank was ruled out, as hearsay.

This statement of Lemmie Quinn was a part of the res gestae and was not hearsay evidence and was material to the defendant's cause. Lemmie Quinn testified that he saw Mr. Frank in his office just before he went down to the restaurant and had the conversation with Mrs. Freeman and Miss Hall; this testimony was strongly disputed by the solicitor. Lemmie Quinn's statement that he was in Frank's office just before going into the restaurant was of the greatest moment to the defendant, because it strongly tended to dispute the contention of the State that Mary Phagan was killed between twelve and half past.

The Court erred in ruling out and declining to hear this, for the reasons above stated. The testimony was relevant, material, and part of the res gestae, and should have been sent to the jury.

35. Because the Court permitted, at the instance of the Solicitor-General, the witness Sig Montag to testify over the objection of the defendant, made when same was offered, that same was irrelevant, immaterial, incompetent; that the National Pencil Company employed the Pinkertons; that the Pinkertons have not been paid, but have sent in their bills; that they sent them in two or three times; that, otherwise, no request has been made for payment, and that Pierce, of the Pinkerton Agency, has not asked the witness for pay.

In permitting this testimony to go to the jury, over the objections above stated, the Court erred.

The introduction of this evidence was prejudicial to the defendant, for the reason that the solicitor contended that the pay due the Pinkertons by the Pencil Company was withheld for the purpose of affecting the testimony of the agents of that company.

36. Because the Court permitted, at the instance of the solicitor the witness Sig Montag, to testify over the objection of defendant, made at the time the testimony was offered that same was irrelevant, immaterial, and incompetent, that he got the reports made on the crime by the Pinkertons and that they were made. That these reports came sometimes every day and then they did not come for a few days and then came again. That he practically got every day's report; that he got the report about finding the big stick and about the finding of the envelope, that he got them pretty close after they were made; that he knew about them having the stick and the envelope when he read the report. That he did not request Mr. Pierce, representing the Pinkertons, to keep from the police and the authorities the finding of the stick and the envelope.

The Court, over the objections of the defendant, on the grounds stated, permitted this testimony to go to the jury and in doing so erred.

This was prejudicial to the defendant because the solicitor insisted that the finding of the envelope and stick were concealed from the authorities.

37. Because the Court erred in permitting the witness Leech, a street car inspector, at the instance of the solicitor and over the objections of the defendant that same was irrelevant, immaterial, and incompetent, to testify that he had seen street car men come in ahead of their schedule time. That he had seen that often and had seen it last week. That he, Leech, had suspended a man last week for running as much as six minutes ahead of time. That he suspends them pretty well every week and that he suspends a man for being six minutes ahead of time just like he would for being six minutes late. It frequently happens that a street car crew comes in ahead of time and that they are given demerits for it and that he sometimes suspends them for it. That the street car crews are relieved in the center of town; that sometimes a crew is caught ahead of time when they are going to be relieved. That it is not a matter of impossibility to keep the men from getting ahead of time, although that does happen almost every day. That there are some lines on which the crew does not come in ahead of time because they can not get in. It frequently happens that the English Avenue car cuts off the River car and the Marietta car. It often happens that these cars are cut off. That when there is a procession or anything moving through town, it makes the crew anxious to get through town, that they are punished just as much for coming in ahead of time even a day like that as they would be any other day. They do their best to keep the schedule, but in spite of it they sometimes get off.

The Court permitted the testimony of the witness Leech over the objection of the defendant that the same was irrelevant, immaterial and incompetent, and in doing so committed error.

This was prejudicial to the defendant, because the crew on the English Avenue car upon which the little girl, Mary Phagan, came to town, testified that she got on their car at ten minutes to twelve. That under their schedule they should reach the corner of Broad and Marietta Streets at 7½ minutes past twelve. That they were on their schedule time on April 26th and did reach that place at 12:07 or 12:07½. What other crews did at other times or even what this crew did on other occasions was wholly immaterial and in no way illustrated just what took place on the trip wherein Mary Phagan came to town. That other crews often came in ahead of time or that this particular crew often came in ahead of time was wholly immaterial.

38. Because during the examination by Mr. Arnold, counsel for the defendant, of V. H. Kreigshaber, a witness for the defendant, there was laughter in the audience, sufficiently generally distributed throughout the audience and loud enough to interfere with the examination. The testimony elecited from Kreigshaber was that Frank was a young man, and that Kreigshaber was older, but he didn't know how much older. Mr. Arnold called the Court's attention to the interruption for the purpose of obtaining some action from the Court thereon.

The Court stated that if there was other disorder no one would be permitted in the court room on the following day and requested the Sheriff to maintain order.

The defendant says that the Court erred in not then taking radical steps to preserve order in the court room and to permit the trial to proceed orderly and that a threat to clear the court room upon the following day and the request for the Sheriff to keep order was not sufficient for the purpose.

This was prejudicial to the defendant, because the laughter was directly in derision of the defendant's defense being made by his counsel.

39. Because the Court permitted, at the instance of the Solicitor, the witness Milton Klein to testify, over the objection of the defendant, made when the evidence was offered, that the same was immaterial, as follows:

"When the witness Conley was brought to the jail Mr. Roberts came to the cell and wanted Frank to see Conley. I sent word through Mr. Roberts that Frank didn't care to see him. Mr. Frank knew that the detectives were down there and afterwards they brought Conley up there and of course Mr. Frank knew he was there. I knew and Mr. Frank knew he was there. Mr. Frank was at one side and I acted as spokesman. Mr. Frank would not see any of the city detectives. Frank gave as his reason for refusing to see Conley with the detectives that he would see him only with the consent of Mr. Rosser, his attorney. I do not know whether Mr. Frank sent and got Mr. Rosser or not. I told the detectives about sending and getting Mr. Rosser's consent. I think Mr. Goldstein was there and Scott and Black and a half-dozen detectives, a whole bunch of them. I was there only once when Conley was there, that was the time when Conley swore he wrote the notes on Friday. When Conley came up there with the detectives, Frank's manner, bearing and deportment were natural. He considered Conley in the same light he considered any other of the city detectives. I know that because I conferred with him about it and he said he would not see any of the city detectives without the consent of Mr. Rosser; he considered Scott as working for the city at that time. I sent word that he would not receive any of the city detectives, Black or anyone of the rest of them. Frank considered Scott with the rest of them, including him with the city detectives. He would not see anyone of the city detectives and that included Scott. Frank did not tell me that, the inference was mine. Frank merely said he would receive none of the city detectives without Mr. Rosser's consent, that was the substance of his conversation. Mr. Roberts came up and announced the city detectives; this was at Frank's cell in the county jail."

The Court permitted this testimony to go to the jury over the objections made as above stated, and in doing so committed error.

This was especially prejudicial to the defendant, because the Solicitor, in his argument to the jury stressed and urged upon the jury that this failure of the defendant to, as he expressed it, face this negro Conley and the detectives, even in the absence of his own counsel, was evidence of guilt.

40. Because the Court permitted Miss Mary Pirk to be asked the following questions and to make the following answers on cross examination made by the Solicitor:

Q. You never heard of a single thing immoral during that five years—that's true? (Referring to the time she worked at the pencil factory.)

A. Yes, sir, that's true.

Q. You never knew of his (Frank's) being guilty of a thing that was immoral during those five years—is that true?

A. Yes, sir.

Q. You never heard a single soul during that time discuss it?

A. No, sir.

Q. You have never heard of his going in the dressing rooms there of the girls?

A. No, sir.

Q. You never heard of his slapping them as he would go by?

A. No, sir.

Q. Did you ever see Mr. Frank go back there and take Mary off to one side and talk to her?

A. I never seen it.

Q. That never occurred?

A. I have never seen it.

Q. You never heard about the time that Frank had her off in the corner there, and she was trying to get back to her work?

A. No, sir.

Q. You didn't know about that?

A. No, sir.

Q. That was not discussed?

A. No, sir.

These questions were asked over the objection of the defendant, because even if the Solicitor's questions brought out that the witness had heard charges of immorality against Frank, that her answers thereabout would have been irrelevant and immaterial in this trial of Frank for murder. The fact that Frank might have been frequently guilty of immorality could not be held against him on a trial for the murder of Mary Phagan. Nor, could acts of immorality with women be heard, even on cross examination, as evidence of bad character and reputation, upon Frank's trial for the murder of Mary Phagan. Lasciviousness is not one of the character traits involved in a case of murder and can not be heard in a murder trial, even when the defendant has put his character in issue.

41. Because the Court permitted the witness W. D. McWorth to testify, at the request of the Solicitor-General, over the objection of the defendant made at the time the testimony was offered, that the same was immaterial.

"Mr. Pierce is the head of the Pinkerton office here. I do not know where he is; the last time I saw him was Monday evening, I do not know where Mr. Whitfield is (Mr. Whitfield was also a Pinkerton man). I saw him the last time Monday afternoon. I do not know whether Pierce and Whitfield are in the city or not."

The Court admitted this testimony over the objections of the defendant, made at the time the testimony was offered, for the reasons stated and in so doing committed error. This was especially prejudicial to the defendant. Pierce and Whitfield were part of the Pinkerton's force in the city of Atlanta and the inference of the solicitor was that he wished their whereabouts to be shown, upon the theory that the Pinkertons were employed by Frank for the National Pencil Company and that a failure on the part of Frank to produce them would be a presumption against him, as he stated it, upon the well-known principle of law that if evidence is shown to be in the possession of a party and not produced, it raises a presumption against them.

42. Because the Court permitted McWorth, at the instance of the Solicitor-General to testify over the objections of the defendant, made when the evidence was offered, that the same was irrelevant, immaterial and illegal:

"I reported it (the finding of the club and envelope) to the police force about 17 hours afterwards. After I reported the finding, I had a further conference with the police about it about four hours afterwards. I told John Black about the envelope and the club. I turned the envelope and club into the possession of H. B. Pierce."

The Court heard this testimony over the objection of the defendant, made as above stated, and in doing so committed error, for the reasons herein stated.

This was prejudicial to the defendant, because the Solicitor-General contended that his failure to sooner report the finding of the club and the envelope to the police were circumstances against Frank. These detectives were not employed by Frank, but by Frank for the National Pencil Company, and movant contends that he is not bound by what they did or failed to do. The Court should have so instructed the jury.

43. Because the court permitted the witness Irene Jackson, at the instance of the Solicitor-General and over the objection of the defendant, that the testimony was irrelevant, immaterial, illegal, to testify as follows:

Q. Do you remember having a conversation with Mr. Starnes about something that occurred.

A. Yes, sir.

Q. Now what was that dressing room incident that you told him about that time?

A. I said she was undressing.

Q. Who was undressing?

A. Ermilie Mayfield, and I came in the room, and while I was in there, Mr. Frank came to the door.

Q. Mr. Frank came in the door?

A. Yes, sir.

Q. What did he do?

A. He looked and turned around and walked out.

Q. Did Mr. Frank open the door?

A. Yes, he just pushed it open.

Q. Pushed the door open?

A. Yes, sir.

Q. And looked in?

A. Yes, sir.

Q. And smiled?

A. I don't know whether, I never notice to see whether he smiled or not, he just kind of looked at us and turned around and walked out.

Q. Looked at you, stood there how long?

A. I didn't time him; he just came and looked and turned and walked out.

Q. Came in the dressing room?

A. Just came to the door.

Q. Came into the door of the dressing room?

A. Yes.

Q. How was Miss Ermilie Mayfield dressed at that time?

A. She had off her top dress, and was holding her old dress in her hand to put it on.

Q. Now, you reported that to the forelady there?

A. I did not but Ermilie did.

Q. Now did you talk or not to anybody or hear of anybody except Miss Ermilie Mayfield talking about Mr. Frank going in the dressing room there when she had some of her clothes off?

A. I have heard remarks but I don't remember who said them, or anything about it?

Q. (By Mr. Rosser): Was that before April 26th?

A. Yes, sir.

Q. Well, what was said about Mr. Frank going into the room, the dressing room?

A. I don't remember.

Q. Well, by whom was it said?

A. I don't remember.

Q. Well, how many girls did you hear talking about it?

A. I don't remember; I just remember I heard something about it two or three different times, but I don't remember anything about it, just a few times.

Q. Was that said two or three different times?

A. I said a few times, I said two or three times.

Q. How would the girls—she said she heard them talking about Mr. Frank going in the dressing room on two or three different occasions—well, you know you heard them discussing about his going in this dressing room on different occasions, two or three different occasions, did you?

A. Yes.

Q. That is what you said, wasn't it?

A. Yes, sir.

Q. Now when was it that he run in there on Miss Ermilie Mayfield?

A. It was the middle of the week after we had started to work, I don't remember the time.

Q. The middle of the week after you had started to work?

A. Yes, sir.

Q. Was that the first time you ever heard of his going in the dressing room, or anybody?

A. Yes.

Q. That was the first time?

A. Yes, sir.

Q. Then that was reported to this forelady?

A. Yes, sir.

Q. Then when was the second time that you heard he went in there?

A. He went in there when my sister was lying down.

Q. Your sister was lying down, in what kind of position was your sister?

A. She just had her feet up on the table.

Q. Had her feet up on the table?

A. Had them on a stool, I believe, I don't remember.

Q. A table or stool?

A. Yes, sir.

Q. Was she undressed or dressed?

A. She was dressed.

Q. She was dressed; do you know how her dress was?

A. No sir, I didn't look.

Q. You don't know that, you were not in there?

A. Yes, sir, I was in there, but I didn't look.

Q. Well, now, what did Mr. Frank do that time?

A. I didn't pay any attention to it, only he just walked in and turned and walked out, looked at the girls that were sitting in the window, and walked out.

Q. What did the girls say about that?

A. I don't remember.

Q. Did they talk about it at all?

A. There was something said about it, but I don't remember.

Q. Well now did you or not hear them say that he would go in that room and stand and stare at them?

A. Yes, sir, I have heard something, but I don't remember exactly.

Q. You heard that; how often did you hear that talked?

A. I don't remember.

Q. You don't remember how often you heard them say he walked in there and stood and stared at them?

A. I don't remember.

Q. You don't remember that; well now, you said about three times those things occurred, and you have given us two, Miss Mayfield and your sister, what was the other occasion?

A. Miss Mamie Kitchens.

Q. Miss Mamie Kitchens?

A. Yes, sir.

Q. Mr. Frank walked in the dressing room on Miss Mamie Kitchens?

A. We were in there, she and I.

Q. You were in there and Mr. Frank came in there?

A. Yes, sir.

Q. So that was the three times you know of yourself?

A. Yes, sir.

Q. Then did you hear it talked of?

A. I have heard it spoken of, but I don't remember.

Q. You have heard them speak of other times when you were not there, is that correct?

A. Yes, sir.

Q. How many times when you were not there? That is three times you saw him; how many times did you hear them talk about it when you were not there?

A. I don't remember.

Q. What did they say Mr. Frank did when he would come in that dressing room?

A. I don't remember.

Q. Did he say anything those three times when you were there?

A. No, sir.

Q. Was the door closed?

A. It was pushed to, but there was no way to fasten the door.

Q. Pushed to, but no way to fasten it?

A. No, sir.

Q. He didn't come in the room?

A. He pushed the door open and stood in the door.

Q. Stood in the door, what kind of a dressing room was that?

A. It was—just had a mirror in it; you mean to describe the inside?

Q. Just describe it; was it all just one room?

A. Yes, sir, and there were a few lockers for the foreladies.

Q. A few lockers around the walls, a place where the girls changed their street dress and got into their working dress, and vice-versa?

A. Yes, sir.

Q. Now, what else did you ever see that Mr. Frank did except go in the dressing room and stare at the girls?

A. Nothing that I know of.

Q. When Mr. Frank opened the door, there was no way he could tell before he opened the door what condition the girls were in, was there?

A. No, sir.

Q. (By Mr. Arnold): He didn't know they were in there, did he?

A. I don't know.

Q. That was the dressing room and the usual hour for the girls to attend the dressing room, wasn't it?

A. Yes, sir.

Q. Undressing and getting ready to go to work?

A. Yes, sir.

Q. Changing their street clothes and putting on their working clothes, that is true, Miss Jackson?

A. Yes, sir.

Q. That was the usual hour; you had all registered on or not, before you went up into this dressing room?

A. Yes, sir.

Q. And Mr. Frank knew the girls would stop there?

A. Yes, sir.

Q. After registering?

A. Yes, sir.

Q. Now, did you hear or not any talk about Mr. Frank going around and putting his hands on the girls?

A. No, sir.

Q. Was that before or after he had run in the dressing room?

A. I don't remember.

Q. Well, he pushed the door open and stood in the door, did he?

A. Stood in the door.

Q. Looked in and smiled?

A. Yes, sir.

Q. Didn't you say that?

A. I don't remember now, he smiled or made some kind of a face which looked like a smile, like smiling at Ermilie Mayfield.

Q. At Ermilie Mayfield, that day she was undressed?

A. But he didn't speak, yes sir.

Q. He didn't say a word, did he?

A. No, sir.

Q. Did he say anything about any flirting?

A. Not to us, no, sir.

These questions and answers were objected to for the reasons above stated, and for the further reason that a statement showing improper conduct of Frank in going into the dressing rooms with girls, while improper, was intended to create prejudice against him and in no way elucidated the question as to whether he was or was not the murderer of Mary Phagan.

Movant contends that the act that the defendant had put his character in issue is no reason why reported or actual facts of immorality should be admitted in evidence over his objection. The defendant's reputation or character for immorality or loose conduct with women are not relevant subjects for consideration in determining whether the defendant has or has not a good character when such good character is considered in connection with a charge for murder.

44. Because the Court permitted the Solicitor to ask and have answered by the witness Harlee Branch the following questions, said questions and answers dealing with an incident occurring at the pencil factory, wherein Conley, after having made the third affidavit in the record purported to re-enact the occurrence between himself and Frank on April 26th, wherein the body of Mary Phagan was taken from the office floor to the cellar of the factory:

Q. Now, Mr. Branch, take this stick and that picture, and take up Conley now, and give every move he made?

A. Am I to give you the time he arrived there? (Pencil factory.)

Q. Yes, give the time he arrived.

A. I will have to give that approximately; I was to be there at 12 o'clock, and I was a few minutes late, and Conley hadn't arrived there then, and we waited until they brought him there, which was probably ten or fifteen minutes later; the officers brought Conley into the main entrance here and to the staircase, I don't know where the staircase is here—yes, here it is, (indicating on diagram) and they carried him up there, and they told him what he was there for, and questioned him, and made him understand that he was to re-enact the pantomine.

Q. Just tell what Conley did?

A. After a few minutes conversation, a very brief conversation, Conley led the officers back here and turned off to his left to a place back here, I guess this is it (indicating on diagram) right where this is near some toilets, and he says:

Q. Go ahead.

A. He was telling his story as he went through there, and he said when he got up there, he went back and he said he found this body back in that place.

Q. Go ahead and tell what he said and did.

A. He was talking constantly all the time, I don't know how he made out a part of his story.

Q. Go ahead now, and state what Conley did and said as he went through that factory?

A. Well when he got back —. After reaching this point at the rear left side of the factory, described the position of the body, as he stated it, he stated the head was lying towards the north and the feet towards the south, as indicated, and there was a cord around the neck.

Q. State what he said, what he said Mr. Frand did and said.

A. He didn't state how long it took for the various movements.

Q. (By the Court): Did you time it?

A. No, sir, I know the time I arrived there and the time I left the factory.

Q. First, I want you to state what he said he did, and what he said Mr. Frank did, and then come up on the time business.

A. I don't quite understand what I am to do.

Q. Just go ahead and tell what Conley said he said, and what Conley said Mr. Frank said, and show what Conley did the day you were over there, take it up right back here where the body was and go on with it, leaving out, however, what he said about the cord and all that.

A. He said when he found the body, he came up to Mr. Frank, called to him from some point along here, I should judge (indicating on diagram), I don't understand this diagram exactly, and told him the girl was dead, and I don't know exactly what Mr. Frank said, I will try to eliminate as much of that conversation as I can. Anyhow, he said he came on up where Mr. Fank was, and that he was instructed to go to the cotton room, where he showed us, I don't know, it must be on the same side of the building, about here, I judge, (indicating) and he went in there, he showed us the cotton room, and he said he went back, and he did go back, lead us back, and told about taking up the body, how he brought it on up on his shoulder, and then in front of a little kind of impression of the wall, said he dropped it, and he indicated the place, and then he came up and told Mr. Frank about it, that he would have to come and help him, or something like that, and that Mr. Frank came back and took the feet, I believe, he said, and he took the head, and they brought the body up to the elevator and put it on the elevator.

Q. (By the Court): Was he going through all that thing?

A. Yes sir, he was enacting this all the time, and talking all the time. He described how the body was put on the elevator, and he said Mr. Frank run the elevator down, and he went on down the elevator.

Q. (By the Court): Did he go down in the elevator?

A. On this trip, yes, sir, he went down in the elevator to the basement, and he said Mr. Frank helped to take the body out, and they dropped it there, and Mr. Frank told him to take it up and carry it back, and he put the body on his shoulder and carried it back to this sawdust which is away back here, and that he came on back and there was something in here which he said he threw on this trash pile, and Mr. Frank was up, he said, in the cubby hole, he said, somewhere back there, and later he led us up there, and that Mr. Frank told him to run the elevator up, so Conley and the officers and the rest of us who were with him came up on the elevator, and when they got to the first floor, just before getting to the first floor, he said this was where

Mr. Frank got on the elevator, Mr. Frank was waiting there for him; then they brought the elevator on up to the second floor, and he had them to stop the elevator just, I suppose, a foot, or a little more below the landing, and he said Mr. Frank jumped off when the elevator was about that point, and after getting up, he said Mr. Frank went around the elevator to a sink that he showed us back of the elevator, to wash his hands, and he waited out in front, and he said he shut off the power while Mr. Frank was gone around there, and when Mr. Frank came back, they went in the office, and he led us in the office through—there is an outer office there, and he come in this way, and come through in this office back there, this inner office, and he indicated Mr. Frank's desk and a desk right behind it, I presume this is the two desks (indicating) that Mr. Frank sat down in a chair at that desk, and he told him to sit at this other desk, and Mr. Frank told him to write some notes, and he was asked by some of the officers to write what Mr. Frank had told him to write, and he sat down there and wrote one note, and I believe—I know he wrote one note, and I don't know whether he wrote one or two, and that Mr. Frank handed him some money and that later he took it back, and I don't remember whether he gave him the cigarettes and money before or after this, I don't recall. Anyway, when he was in there, after he had written the notes for the officers, I found it was time for me to get in the office with my copy, he hadn't finished, he was still sitting there, and I telephoned into the office for relief, someone to relieve me, and I went to the office, and I left him there in this office, and I went in.

Q. What time was it when Conley got there?

A. I should judge it was a quarter past twelve, I didn't look at my watch.

Q. A quarter past twelve, what time did you get there?

A. I must have gotten there five minutes before he did.

Q. Then what time did you leave?

A. I left about one o'clock.

Q. What time did he begin?

A. They rushed him right up the steps and probably two or three minutes after he got up there, he began this enactment, and he went very rapidly, in fact, we sort of trot to keep behind him.

Q. You say you did keep behind him, were any questions asked him during that?

A. Constantly, yes, sir.

Q. How many people were asking him questions.

A. Well, I suppose four or five of the officers.

Q. How much of the talking that Conley did have you cut out?

A. Well, I have cut out a good deal, I have no way of indicating how much.

Q. Well, did he do or not more talking that you have stated?

A. A great deal more.

Q. A great deal more? How much more would you say?

A. I have no way of estimating, he was talking constantly, except when he was interrupted by questions.

Q. Now, Mr. Branch, do you know the amount of time that Conley spent in this? First, you say you got there at a quarter past twelve, did you?

A. I didn't time it, but it must have been, because I was endeavoring to get there at twelve o'clock, and when I got to the office from police station, it was five or ten minutes after twelve, and I walked down just about a block and a half.

Q. And Conley got there at what time?

A. He came just, I should say, five minutes after I did, not longer than five minutes.

Q. Not longer than that, and he got there at 12:20, then; and what time did you go away?

A. I left a little after one.

Q. How much after one?

A. I do not know, probably five or ten minutes.

Q. One-ten then; now, how much of the time during that time you were there did it take Conley to act what he acted, leaving out the conversation he had with the different men?

A. That would be a difficult thing for me to estimate, while he was acting, he was acting very rapidly, he kept us on the run.

Q. All right; now, leave out now the time that it took this man to answer the questions that were put to him by yourself and other men that accompanied him through there, leave that out now and give us your best opinion as to how long it took Conley to go through that demonstration?

A. There was no way to do that, there was no way to disassociate the time, and find out the difference between the two, between the time he was acting and talking; I didn't attempt to do that; in fact, the only time I was interested in was the time I would have to get back to the office.

Q. You got to the office, you say about 1:10?

A. Yes, sir.

Q. What time, then, you say, about, you left the pencil factory?

A. I left the pencil factory between five and ten minutes after one.

Q. You left the pencil factory then at about 1:10?

A. Yes, between 1:05 and 1:10.

The defendant objected to this testimony, because (a) this so-called experiment made with Conley was solely an effort upon his part to justify his story; (b) the sayings and acts of Conley, testified about as aforesaid were the sayings and acts of Conley, not under oath, had and made without the right of cross examination, the net result of which is but a reptition of Conley's story to the jury, without the sanction of an oath, and without cross examination. That Conley went to the factory immediately after making his last affidavit; that that last affidavit is not the way he tells the story on the stand; that he tells it wholly differently on the stand; at least differently in many particulars; that it can not help the jury for Conley to go and illustrate that affidavit when he says now on the stand that much of it was a lie, and that it did not happen that way at all; that this evidence was of another transaction, not binding on this defendant.

45. Because the Court declined to allow Dr. David Marx to give testimony in behalf of the defendant as to the character of the Jewish organization known as B'Nai Brith. Defendant's counsel stated at the time that Dr. Marx would testify that while the B'Nai Brith was an international Jewish charitable organization, its charity did not extend to giving aid to persons charged with a violation of the criminal law, as was Mr. Frank in this case.

The State objected to permitting Dr. Marx to make the answer sought, and the Court declined to permit the testimony to go to the jury.

46. Because the Court permitted the witness Mrs. J. J. Wardlaw, who before her marriage was Miss Lula McDonal, to be asked by the Solicitor-General the follownig questions and to make the following answers:

Q. You never knew of his improper relations with any of the girls at the factory?

A. No, sir.

Q. Now, did you ever, do you know, or did you ever hear of a girl who went with Mr. Frank on a street car to Hapeville the Saturday before Mary Phagan was murdered?

A. No, sir.

Q. On the same street car with Hermes Stanton and H. M. Baker and G. S. Adams?

A. No, sir.

Q. And about his putting his arm around her and trying to get her at various places to get off with him?

A. No, sir.

Q. And go to the woods with him?

A. No, sir.

Q. She was a little girl that got on at the corner of Forsyth and Hunter Streets, there where the car passes?

A. No, I don't know that.

Q. You never heard of it at all?

A. No, sir.

Q. The Saturday before?

A. No, sir.

Q. You say you have never heard of any act of immorality on the part of Mr. Frank prior to April 26, 1913?

A. No, sir, I did not.

Q. You never talked with Hermes Stanton or H. M. Baker, the conductor or motorman?

Q. I will put it that way then, you never heard that, the Saturday before little Mary Phagan met her death, Mr. Frank went out on the Hapeville car on which Hermes Stanton and H. M. Baker were in charge, and that he had his arm around the little girl, and that he endeavored at various places to get that little girl to get off the car and go to the woods with him?

A. No, sir.

Q. You never heard such a statement as that at all by anybody?

A. No, sir, I did not.

The defendant objected to the above questions made by the Solicitor-General, because while the witness denied any knowledge by hearsay or otherwise of the wrong asked about, the mere asking of such questions, the answers to which must have been irrelevant and prejudicial was harmful to the defendant, and the Court erred in permitting such questions to be asked, no matter what the answers were.

The Court further erred because, although the defendant had put his character in issue, the State could not reply by proof or reputation of improper or immoral conduct with women. The reputation for lasciviousness is not involved in that general character that is material where the charge is murder.

47. Because the Court permitted the witness, W. E. Turner, at the instance of the Solicitor and over the objection of the defendant made at the time the evidence was offered that same was irrelevant, immaterial and dealt with other matters than the issues involved, to testify:

"I saw Mr. Frank talking to Mary Phagan on the second floor of the factory about the middle of March. Frank was talking to her in the back part of the building. It was just before dinner. I do not know whether anybody was in the room besides Mr. Frank and Mary. After I went in there two young ladies came down and showed me where to put the pencils. Nobody was in there but Mr. Frank and Mary at the time I went in there. Mary was going to her work when Mr. Frank stopped to talk to her. Mary told him that she had to go to work. Mr. Frank was talking about he was the Superintendent of the pencil factory. He told her that he was the Superintendent of the pencil factory and that he wanted to speak to her and she told him she had to go to work and I never did hear any more replies from either one. I left just when she told him she had to go to work. Mary backed off and Frank went on towards her talking to her. That was before I left, was when she backed off, and the last words I heard him say was he wanted to talk to her. Mary did not stand still; she moved backward about 3½ feet. While she was going backwards Mr. Frank was talking to her and walking towards her. Mr. Frank said 'I am the superintendent of the pencil factory and I want to speak to you,' and Mary said, 'I have got to go to work.' "

The Court, over the objections made as is above stated, permitted this testimony to go before the jury and in so doing committed error, for the reasons above stated.

This was prejudicial to the defendant, because the transaction testified about was a transaction distinct from those making the issues in the present case, threw no light on that trial and tended to prejudice the jury against Frank upon the theory that he was seeking to be intimate with this little girl.

48. Because the Court erred in admitting to the jury, over the objection of defendant's counsel, made at the time the evidence was offered that the same was irrelevant, immaterial, dealt with collateral matters to the confusion of the issues on trial, the following extracts from the minutes of the Board of Health of the State of Georgia:

"The President then addressed the Board at length on his reasons for thinking that the Secretary should be requested to resign, the subjects dealt with being too enormous and too lengthy to be included here in their entirety. After the President's address, the Board adjourned and reassembled again at four o'clock in the afternoon, at which time Dr. Harris' side of the controversy was heard."

"The President (of the Board, Dr. Westmoreland), then addressed the Board at length on his reasons for thinking that the Secretary should be requested to resign, the subjects dealt with being too numerous and too lengthy to be included here in their entirety. After the President's address, the Board adjourned and reassembled again at four o'clock in the afternoon, at which time Dr. Harris' side of the controversy was heard."

"The Secretary not having been present at what transpired following this was not in a position to take note as to the proceeding, but was informed by the members on adjournment that it was their wish that he should still continue as Secretary and Director of the Laboratory.''

''The President then made a short statement in support of his protest against the Secretary, and reiterated some of the charges made at the previous meeting, and in addition, made objection against the Secretary's action in sending out antitoxine No. 64, which had been shown by tests made in Washington to be of less potency than it was originally labelled and also condemning the Secretary for replacing Dr. Paullin and personally taking up the investigation of the malarial epidemic around the pond of the Central of Georgia Power Company. The President then stated that he would publish the charges against the Secretary if the Board did not take such action regarding them as he thought right and proper. At the conclusion of the President's address, a talk was made by Mr. Doughty, in which he took exception to the former's attitude, and insisted—''

''At the conclusion of the President's address a talk was made by Mr. Doughty, in which he took exception to the former's attitude, and insisted that every member of the Board wished to do what was best for the State Board of Health and the people of Georgia, and that everyone connected with the Board of Health should be willing to bow to the decision of this body. He deprecated strongly the idea of giving to the press charges the publication of which could do no good, and which could only result in harm.''

''On the President and Secretary being recalled an hour later, the President pro tem. Mr. Benedict, read the following resolution, which had been unanimously adopted by the Board on motion of Mr. Harbin, seconded by Dr. Brown, the resolution having been drawn by a committee appointed by the Board, consisting of Doctors Benedict, Taylor and Doughty.''

''That the committtee appointed to frame a resolution expressing the opinion of the Board with regard to the charges preferred against the Secretary by the President of the Board in a report to the Governor, and upon which they are called upon to act, beg to report as follows:

''Resolved, That the members of the Board present, after carefully considering the charges and all evidence in its possession, unanimously agree that while there have been certain slight irregularities in the conduct of some departments of the laboratories of the State Board of Health, which should be corrected, these irregularities have not been so important in charactr or result as to call for or warrant the discontinuance of Dr. Harris as Secretary and director of laboratories as demanded by the President. The Board further directs that a copy of this resolution be transmitted to the Governor.''

Following the reading of this resolution, Dr. Westmoreland tendered his resignation as President of the Board, a copy of which follows:

''Atlanta, Ga., Sept. 25th, 1911.

''To the members of the Georgia State Board of Health, Atlanta, Ga. Gentlemen: I hereby tender you my resignation to take effect at this meeting. Thanking you for the courtesies extended me, and for the honor conferred on me in the past, I am, very sincerely yours, W. F. Westmoreland, President.''

''Now, on pages 164 and 165; that is the letter to the Governor, adopted by the Board, and sent to his Excellency, John M. Slaton, Governor, Atlanta, Ga.''

The Court admitted these extracts from the minutes over the objections of defendant, as above stated, and in so doing committed error for said reasons.

This was prejudicial to the defendant and took the minds of the jury from the issues on the trial and centered them upon a medical row had between

Dr. Westmoreland who had once been president of the State Board of Health and Dr. Harris, who had been and was its Secretary. This row between the doctors stated is utterly immaterial and irrelevant and was harmful to the defendant because it tended to discredit the testimony of Dr. Westmoreland who resigned from the Board and to sustain the testimony of Dr. Harris, who remained as Secretary of the Board after Dr. Westmoreland's resignation.

49. Because the court permitted the witness E. H. Pickett to testify over the objection made when the testimony was offered that it was wholly and entirely irrelevant, immaterial, incompetent, illegal, dealt with transactions between other parties, threw no light on the issues involved and did not bind the defendant, to testify:

"Minola McKnight at first denied that she had been warned by Mrs. Selig when she left to go to the solicitor's office on May 3rd not to talk about the case, that when asked she stated that she was on that date instructed not to talk. At first, Minola stated that her wages had not been changed by the Seligs, that she was receiving the same wages as before the crime. At first she said her wages hadn't been changed and then she said her wages had been raised, just what I can't remember because it varied from one week to another; she said the Selig family had raised her wages. The only statement she made about Mrs. Frank giving her a hat was when she made the affidavit, we didn't know anything about that hat before."

The Court permitted this testimony to go to the jury over the objections above stated and therein erred. The Court stated that he admitted this testimony on the idea that the ground of impeachment for Minola McKnight had been laid.

This testimony was prejudicial to the defendant, because the Court in admitting it, left the jury to consider the statements of Minola McKnight, that Mrs. Selig had instructed her not to talk, that the Seligs since the crime had raised her wages; that Mrs. Frank had given her a hat.

50. Because the Court permitted the witness J. H. Hendricks to testify, at the instance of the solicitor and over the objection of the defendant, that the same was irrelevant, incompetent and immaterial, that:

"I am a motorman for the Georgia Railway & Power Company, running on April 26, 1913, on Marietta to Stock Yards and Decatur Street car. The Cooper and English Ave. run is on the same route from Broad and Marietta Street to Jones Ave. Prior to April 26, 1913, the English Ave. car with Mathes and Hollis on it did run to Broad and Marietta Streets ahead of time; how much ahead I can not say positively. About April 26th and subsequent thereto Mathes and Hollis, in charge of the English Ave. car, about twelve o'clock when they were due to get off at dinner did come in ahead of time. I have seen them two or three times ahead of time. At the time they were relieved, I got to Broad and Marietta streets about 12:06. When I would get there on schedule time, I don't know where Mathes and Hollis were, they should have been coming in. When Hollis would be at the corner of Broad and Marietta streets, and his car would not be there and my car would be on time, Hollis would leave Broad and Marietta street for dinner on my car."

The Court permitted this testimony to go to the jury over the objections above stated and in doing so committed error for the reasons stated. Movant contends that this was prejudicial to the defendant because it was a material matter to determine at what time his car got to Marietta and Broad streets on the day of the murder, and it confused and misled the jury to hear testimony as to when he got there upon days other than the day of the murder.

51. Because the Court permitted the witness J. C. McEwen, at the instance of and over the objection of defendant that the same was immaterial, incompetent and irrelevant, to testify:

"I am a street car motorman. Previous to April 26th I ran on the Cooper Street route something like two years. On April 26th, 1913, I was running on Marietta and Decatur Streets. The Cooper Street car or English Ave. car run by Hollis and Mathis was due in town at seven minutes after the hour; the car I was running was due at 12:10. The White City car got into the center of town at five minutes after the hour. About April 26, 1913, the Cooper Street car or English Ave. car frequently cut off the White City car due in town at 12:05. The White City car is due there before the English Ave. car; it is due five minutes after the hour and the Cooper Street car is due seven minutes after the hour. In order for the English Ave. car to cut off the White City car, the Cooper Street car would have to be ahead of time, that is, the English Avenue car would have to be ahead of time. If the White City car was on time at 12:05, the English Ave. car would have to get there before that time to cut it off. That happens quite often. I do know that the car that Mathis and Hollis were running did come into town ahead of time very often, especially if it is a relief trip. I have known it to be four or five minutes ahead of time."

The Court admitted this testimony over the objections above made and in doing so committed error for said reasons.

This was prejudicial to the defendant, because it was material to his defense to show, as sworn to by the conductor and motorman, that the English Ave. car reached the corner of Broad and Marietta streets at 12:07, and it misled the jury to admit evidence tending to show that at other times this same car run by Mathis and Hollis reached the city ahead of time.

Nor would it be material for the purpose of contradicting the motorman who swore that he did not run ahead of time any time for whether he ran ahead of time at other times would be immaterial, and a witness can be impeached only as to misstatements of fact material to the issues in the case.

52. Because the Court permitted, at the instance of the solicitor and over the objection of the defendant, made when the evidence was offered, that same was irrelevant, immaterial and incompetent, the witness Henry Hoffman, to testify as follows:

"I am an inspector for the Georgia Railway & Power Co. I know Mathis, the motorman who runs on the English Ave. car. He is under me a part of the day. He was under me on April 26th, from 11:30 a. m. to 12:07 p. m. Under the schedule, his car is due at the junction of Broad and Marietta Sts. at 12:07. Prior to the beginning of this trial, I have known Mathis' car to cut off the Fair Street car. Under the scedule for the Fair St. car, it arrives in the center of town, junction of Broad and Marietta, at 12:05. At the time Mathis was running ahead of this Fair Street car, which is due at 12:05 at the junction of Marietta and Broad Sts., the Fair Street car would be on its schedule. I have compared my watch with Mathis' watch prior to April 26th. There was at times a difference of from 20 to 35 or 40 seconds. We were both supposed to carry the right time. When I compared my watch with Mathis' I suspect mine was correct, as I just had left it the day I looked at Mathis' watch, and mine was 20 seconds difference, and I had gotten mine from Fred Williams that day. His watch was supposed to compare with the one at the barn. I called Mathis' attention to running ahead of time once or twice that I know of. Men coming in on relief time at supper and dinner, coming to the junction of Broad and Marietta, customarily come in ahead of time."

The Court admitted this testimony over the objections above made, and in doing so committed error for said reasons.

This was prejudicial to the defendant, because it was material to his defense to show, as sworn to by the conductor and motorman, that the English Ave. car reached the corner of Broad and Marietta Streets at 12:07, and it misled the jury to admit evidence tending to show that at other times this same car run by Mathis and Hollis reached the city ahead of time.

Nor would it be material for the purpose of contradicting the motorman who swore that he did not run ahead of time any time, for whether he ran ahead of time at other times would be immaterial, and a witness can be impeached only as to misstatements of fact, material to the issues in the case.

53. Because the Court permitted the witness J. M. Gantt, over the objection of the defendant, made when the evidence was offered that the same was irrevelant and immaterial, to testify substantially as follows:

"The clocks of the pencil company were not accurate. They may vary all the way from three to five minutes in 24 mours."

The Court admitted this testimony over the objections made and in doing so committed error, for the reasons stated.

This was prejudicial to the defendant, because whether the clocks were or were not accurate on April 26th was material to his defense. The witness Gantt had not worked at the factory for three weeks and the fact that the clocks were not keeping accurate time three weeks before the trial was immaterial, and the evidence thereon tended to mislead and confuse the jury. Gantt had not worked at the factory during the three weeks just prior to the crime, and his testimony as to the clocks related to the time he did work at the factory.

54. Because the Court permitted the witness Scott to testify in behalf of his Agency, over the objection of the defendant, that the same was irrelevant immaterial and incompetent, substantially as follows:

> "I got hold of the information about Conley knowing how to write through my operatives that I had investigating while I was out of town. McWorth told me in person when I returned."

The Court permitted this testimony over the defendant's objections, as above stated, and in doing so committed error. This was prejudicial to the defendant, because the solicitor contended that the failure of Frank to report the fact that Conley could write, was a circumstance against Frank's innocence, and he sought to show by the above testimony that the detectives were forced to get that information from someone other than Frank.

55. Because the Court permitted the witness L. T. Kendrick over the objection of the defendant, made at the time the evidence was offered that the same was irrelevant, immaterial and incompetent, to testify substantially as follows:

> "The clock at the pencil factory, when I worked there, needed setting about every 24 hours. You would have to change it from about three to five minutes, I reckon."

The Court permitted this testimony to be heard over the above stated objections of the defendant, and in doing so committed error.

Kendricks had not worked at the factory for months and whether or not the clock was correct at that time was immaterial and tended to confuse the jury in their effort to determine whether or not the clock was accurate upon the date of the tragedy.

56. Because the Court, over the objection of the defendant made at the time the evidence was offered that the same was irrelevant, immaterial, incompetent, illegal and prejudicial to the defendant, permitted the witnesses, Miss Maggie Griffin, Miss Myrtie Cato, Mrs. C. D. Donagan, Mrs. H. R. Johnson, Miss Marie Karst, Miss Nellie Pettis, Miss Mary Davis, Mrs. Mary E. Wallace, Miss Carrie Smith and Miss Estelle Winkle to testify that they were acquainted with the general character of Leo M. Frank prior to April 26, 1913, with reference to lasciviousness, and his relations to women and girls and that it was bad.

The Court admitted this evidence over the objections above stated, and in doing so erred for the reasons herein stated.

In determining general character in cases of murder, lasciviousness or misconduct with women is not one of the traits of character involved. The traits of character involved are peacableness, gentleness, kindness, and it is utterly immaterial to prove bad character for lasciviousness in a murder trial.

To permit this evidence was highly prejudicial to the defendant. It attacked his moral character and while such attack would not tend to convict him of murder nor show him a person of such character as would likely commit murder, its introduction prejudiced the jury against him.

57. Because the Court permitted the witness Miss Dewie Hewell, over the objection of the defendant that the same was irrelevant, immaterial, incompetent, illegal and dealt with separate and distinct matters and issues from this case, to testify:

> "I am now staying in the Station House. Before I came to Atlanta to testify I was in Cincinnati, Ohio, in the Home of the Good Shepherd. I worked at the Pencil Company during February and March, 1913, I quit there in March. I worked on the fourth floor and worked in the metal room, too. I have seen Mr. Frank hold his hand on Mary's shoulder. He would stand pretty close to Mary when he would talk to her, he would lean over in her face."

The Court permitted this testimony over the objection of the defendant, made as is above stated, and in doing so committed error. This was prejudicial to the defendant, because it was introduced to show an effort to be criminally intimate with Mary and inflamed and misled the jury.

58. Because the Court permitted the witness, Miss Cato, over the objection of the defendant that the same was incompetent, illegal and immaterial, to testify substantially as follows:

> "I know Miss Rebecca Carson. I have seen her go twice into the private ladies' dressing room with Leo M. Frank."

The Court permitted this testimony over the objection of the defendant made as is aforesaid and in doing so committed error. The Court stated that this evidence was admitted to dispute the witness they had called.

It was wholly immaterial to the issues involved in this case whether Frank did or did not go into a private dressing room with Miss Carson. It did, however, prejudice the jury as indicating Frank's immorality with reference to women.

59. Because the Court erred in permitting the witness Maggie Griffin to testify over the objection of the defendant made when the testimony was offered that the same was immaterial, illegal, and incompetent, to testify substantially as follows:

> "I have seen Miss Rebecca Carson go into the ladies' dressing room on the fourth floor with Leo M. Frank. Sometimes it was in the evening and sometimes in the morning during working hours. I saw them come in and saw them come out during working hours."

The Court permitted this testimony to go to the jury over the objection of the defendant made as is aforesaid and in doing so committed error. The Court stated that this evidence was admitted to dispte the witnesses they had called.

It was wholly immaterial to the issues involved in this case whether Frank did or did not go into a private dressing room with Miss Carson, it did, however, prejudice the jury as indicating Frank's immorality with reference to women.

60. Because the Court refused to give the following pertinent legal charge in the language requested:

> "The jury are instructed that if under the evidence they believe the theory that another person committed this crime is just as reasonable and just as likely to have occurred as the theory that this defendant committed the crime, that then the evidence would not in a legal sense have excluded every other reasonable hypothesis than that of the prisoner's guilt and you should acquit him."

This request was submitted in writing and was handed to the Court before the jury had retired to consider of their verdict and before the Court began his charge to the jury.

This request was a legal and pertinent one, particularly adjusted to the facts of the case and should have been given, and the Court in declining to give it committed error, although the general principle involved might have been given in the original charge.

61. Because the Court refused to give the following pertinent legal charge in the language requested:

> "If the jury believe from the evidence that the theory or hypothesis that James Conley may have committed this crime is just as reasonable as the theory that the defendant may have committed this crime, then, under the law, it would be your duty to acquit the defendant."

This request was submitted in writing and was handed to the Court before the jury had retired to consider of their verdict and before the Court began his charge to the jury.

This request was a legal and pertinent one, particularly adjusted to the facts of the case and should have been given, and the Court in declining to give it committed error, although the general principle involved might have been given in the original charge.

62. Because the Court refused to give the following pertinent legal charge in the language requested:

> "The jury are instructed that in all cases the burden of proof is upon the State. The State only half carries that burden when it establishes a hypothesis of guilt, but also leaves a hypothesis of innocence. If both theories are consistent with the proved facts, the very uncertainty as to which is correct requires that the jury shall give the benefit of the doubt to the defendant. But when the defendant relies upon circumstantial evidence, he is not obliged to remove the doubt. It is sufficient if he create a reasonable doubt. He is not obliged to prove his innocence. He may rely upon the failure of the State to establish his guilt. If the proved facts in the case establish a hypothesis consistent with the defendant's innocence and sufficient to create a reasonable doubt of his guilt, this is sufficient to acquit him and it is not necessary that he should go further in his proof and exclude every possible idea of his guilt. No such burden is upon the defendant."

This request was submitted in writing and was handed to the court before the jury had retired to consider of their verdict and before the court began his charge to the jury.

This request was a legal and pertinent one, particularly adjusted to the facts of the case and should have been given, and the Court in declining to give it committed error, although the general principle involved may have been given in the original charge.

63. Because the Court declined to give the following pertinent legal charge in the language requested:

"No presumption can arise against the defendant, because of failure to cross examine any witnesses put up by the State, that the defendant was guilty of any particular acts of wrong-doing. You should not, therefore, consider that this defendant because of such failure to cross examine any state's witnesses, has been guilty of any particular acts of wrong-doing."

The above request was submitted to the court in writing before the jury retired to consider their verdict and before the charge was given to the jury.

The above is a correct statement of the law and applicable to the present issue, and the court erred in declining to give it.

The failure to give it was prejudicial to the defendant, for the reason that quite a number of character witnesses were introduced by the state and not cross-examined by the defendant. The solicitor urged before the jury that this failure to cross-examine was evidence of the fact that a cross-examination would have brought out particular acts of wrong-doing which would have affected the defendant's character.

64. Because the court erred in declining to grant a mistrial on motion of the defendant, made by his counsel, made after the argument of the solicitor and before the charge of the court. The motion made by defendant for a mistrial is as follows:

"I have a motion to make, Your Honor, for a mistrial in this case, and I wish to state the facts on which I base it, and I wish the stenographer to take it down, and we propose to prove every fact stated in the motion unless the court will state that he knows the facts and will take cognizance of them without proof.

"First. That counsel requested before this trial began that the court room be cleared of spectators.

"Second. When the court declined to rule out the evidence as to other alleged transactions with women, by Jim Conley, the audience in the court room, who occupied nearly every seat, showed applause by the clapping of hands and stamping of feet and shouting in the presence of the court; the jury was in a room not over twenty feet from the court room—that room back there (indicating), and heard the applause. The court refused to declare a mistrial or to clear the court room on motion of the defendant.

"Third. That on Friday, August 22nd, when the trial was on and the court had just adjourned for the day, and the jury was about 200 feet from the court house proceeding north on Pryor Street, as Mr. Dorsey, the solicitor general, was leaving the court house, a large crowd assembled in front of the court house and, in the hearing of the jury, cheered and shouted 'Hurrah for Dorsey' in the hearing of the jury.

"Fourth. That on Saturday, August 23, 1913, while the trial was still on, and when the court adjourned and Mr. Dorsey emerged from the court room a large crowd, standing on the street, applauded and cheered Mr. Dorsey, shouting 'Hurrah for Dorsey.' The jury at this time was in a cafe at lunch, about 100 feet away, and a portion of the crowd moved up in front of the cafe, at which the jury were at lunch, and in the hearing of the jury shouted 'Hurrah for Dorsey.'

"Fifth. On the last day of the trial, a large crowd, including many women, had assembled in the court room before court opened, taking up every seat in the court room. The jury were in their room not over 20 feet from the court room, and as Mr. Dorsey entered the room, the crowd applauded loudly by clapping of hands and stamping of feet, all in the hearing of the jury. The court admonished the people that if the applause was repeated, he would clear the court room.

"Now, we move upon those facts, which tend to coerce and intimidate and unduly influence this jury, that the court here and now declare a mistrial, and we stand ready to prove each and every fact there and we offer to prove them. Now, if your Honor will take cognizance of those facts as stated, then, of course it will dispense with proof. If your Honor does not take cognizance of them, we are ready to prove them by numbers of people who heard them, including myself; I have heard it, all of it, and the conduct has been most disgraceful. The defendant has not been accorded anything like a fair trial and I am disgusted, may it please your honor, with the unfairness of those members of the public who make such an exhibition of themselves when a man is on trial for his life. I am not afraid of them; I hope nobody else is afraid of them; but the natural tendency is to intimidate a jury, to coerce a jury, and I have never seen a trial so hedged in and surrounded with manifestations of public opinion. I make the motion to declare a mistrial and stand ready to prove these facts. If the court knows them, the court can take cognizance of them."

Upon this motion the Court stated that as to part of the facts he knew and part he did not know. That what occurred on August 25, 1913, the last day of the trial, he did know, as it took place in his presence; that he did hear cheering when Mr. Dorsey went out on the occasion mentioned, but as to what the crowd said, outside of the whooping and holloing, he did not know, and that he did hear the applause in the court room when the court declined to rule out the evidence as to several alleged transactions with women, by Jim Conley.

In support of this motion to declare a mistrial, the following evidence was introduced:

Mr. Deavours testified that he was a deputy sheriff of Fulton County in charge of the jury on Saturday when Mr. Dorsey was applauded in front of the court house as he left that house. When the applauding begun, the jury was in or near the German Cafe, where they went to dinner. When the applause first begun they were about 100 feet from the court house, entering the cafe. That he heard the applause, but did not hear the crowd hollo "Hurrah for Dorsey;" he heard the holloing and cheering and the jury could have heard what he did. That the applause he heard was outside of the cafe, he did not hear the cheering from the inside of the cafe. That he did not remember how many people came up in front of the cafe. No one came in the cafe into the room where the jury was, that is, in the room in the rear.

Mr. Arnold testified: I wish to state that on Friday when court adjourned Mr. Dorsey left the court room and as he left the court room I heard loud cheering at the front. On Saturday, when court adjourned, I asked Mr. Dorsey not to go out until the jury had gotten away from where they could hear the noise of the crowd, for fear they should cheer him again as he left the court room. Mr. Dorsey said all right, and remained in the court room for a while. Finally, I thought the crowd had left, and I presume Mr. Dorsey thought the crowd had left, and of course I do not claim that he is responsible for the cheering, but he finally left the court room and went out, and I went out with Mr. Rosser shortly afterwards, behind him. As Mr. Deavours says, it turned out that the jury had not at that time entered the German Cafe, although I didn't see them. I saw people up there but I didn't know who they were, but as Mr. Dorsey left the court room there were loud and excited cheers and cries of "Hurrah for Dorsey." My judgment is that you could have heard the cheers and cries of "Hurrah for Dorsey" without any trouble, all the way from the court house up Alabama street; that is my opinion. They kept cheering him and as my friend went across the street the cries continued until he got clear into the Kiser building. The first cheering was on Friday afternoon, but the second time was on Saturday when I asked Mr. Dorsey not to go out. I asked Mr. Dorsey not to go out until the crowd dispersed. He stayed in; I am not trying to blame Mr. Dorsey for it. I didn't know the crowd was waiting out there, and I presumed the jury had gotten out of hearing but found they had not. I didn't hear the case mentioned; I heard no allusion to this case but I heard cries of "Hurrah for Dorsey," but on the other occasions—while I love for my friend to meet all the approbation that he may get from the public, I did think that it was an outrage, the crying and shouting; that is what I thought. If the jury were where Mr. Deavours said they were, they could hear; no trouble about hearing it, if they had good ordinary hearing. On Friday I was in the court room when I heard most of the crying; I do not know where the jury was then.

Charles F. Huber testified: I was in charge of the jury when they left the court room Friday afternoon. I do not know how far the jury had gotten before the crowd began cheering in front of the court house. I didn't know myself that they had cheered until the next morning. They didn't know it at all. I had charge of the rear end of the jury. I have good hearing and I heard no cheering.

After the introduction of this testimony, Mr. Arnold for the defense stated that he desired time to examine Mr. Pennington and Mr. Liddell, the other two bailiffs in charge of the jury, who were then absent and asked the court to give him time to make the proof.

After the hearing of this request and the above evidence, the Court ruled: "Well, I am going to charge this jury on this case, and I will give you an opportunity, don't you understand, afterwards, to complete your showing about that, but I will overrule the motion."

During the hearing of this motion for a mistrial and when the witness Charles F. Huber was on the stand and swore that he heard no cheering on the Friday afternoon referred to, and that the jury did not hear it, there was applause among the spectators, on account of the statement that the jury did not hear the cheering. Mr. Arnold called attention to the applause, stating to the Court that the crowd could not be held in even while they were making this investigation.

The Court paid no further attention to this applause than to ask, "What is the matter with you over there?"

In failing to grant the mistrial requested, the Court erred. The motion, taken in connection with the admitted and proven facts, movant contends, clearly show that the defendant was not having a fair trial by reason of the great excitement of the crowd. The court room was in an exceedingly small building, on the ground floor, and was crowded during the whole of the trial and defendant contends that this prejudice and animosity of the crowd against him, as shown by the frequent applause, necessarily reached the jury box and prevented him from having a fair trial.

As permitted by the Court, in his order just aforesaid, we attach hereto in support of this motion for new trial the affidavits hereto attached, marked Exhibits J to AA, both inclusive, and said Exhibits are hereby made a part of this motion for new trial.

65. Because the defendant contends he did not have a fair and impartial trial, by an impartial jury, as provided by the Constitution and laws of this State, for the following reasons, to-wit:

(a) On August 6, 1913, during the trial, the defendant's counsel moved to rule out the testimony of the witness Conley tending to show acts of perversion and acts of immorality on the part of the defendant, wholly disconnected with and disassociated from this crime. The Court declined to rule out said testimony and immediately upon the statement of the Court that he would let such testimony remain in evidence before the jury there was instant, pronounced and continuous applause throughout the crowded court room where the trial was being had, by clapping of hands and by striking of feet upon the floor.

While the jury was not then in the same room where the trial was being had, they were in a room about 50 feet from where the judge was sitting and about 20 feet from portions of the crowd applauding, and so close that perhaps the jury could have heard the applauding.

(b) And again during the trial, Mr. Arnold, one of the counsel for the defendant, in the presence of the jury, objected to a question asked by the solicitor, and the following colloquy took place:

Mr. Arnold: I object to that, your Honor, that is entering the orders on that book merely; that is not the question he is asking now at all.

The Court: What is the question he is asking now?

(Referring to questions asked by the solicitor-general.)

Mr. Arnold: He is asking how long it took to do all this work connected with it. (Referring to work done by Frank the day of the murder.)

The Court: Well, he knows what he is asking him.

(Referring to the solicitor-general.)

Upon this suggestion of the Court that the solicitor knew what he was doing, the spectators in the court room applauded by striking their hands together and by the striking of feet upon the floor, creating quite a demonstration. Defendant's counsel complained of the conduct of the spectators in the court room. The Court gave no relief except directing the sheriff to find out who was making the noise.

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(c) During the examination by Mr. Arnold, counsel for the defendant, of V. H. Kreigshaber, a witness for the defendant, there was laughter in the audience sufficiently generally distributed throughout the audience and loud enough to interfere with the examination. Mr. Arnold called the Court's attention to the interruption for the purpose of obtaining some action from the Court thereon.

The Court stated that if there was other disorder, no one would be permitted in the court room the following day and requested the sheriff to maintain order.

(d) That during the trial, on Friday, August 22d, 1913, when the Court had just adjourned for the day, and the jury was about 300 feet away from the court house, proceeding north on Pryor Street, as Mr. Dorsey, the solicitor-general, was leaving the court room, a large crowd assembled in front of the court house, and in the hearing of the jury cheered and shouted "Hurrah for Dorsey."

(e) That during the trial, on Saturday, August 23, 1913, when court adjourned and Mr. Dorsey emerged from the court room, a large crowd, standing on the street, applauded and cheered him, shouting "Hurrah for Dorsey." At that time the jury was between the court house and what is known as the German Cafe and near enough to the crowd to hear the cheering and shouting. A portion of the crowd moved up in front of the cafe at which the jury were at lunch, and in the hearing of the jury shouted "Hurrah for Dorsey."

(f) On the last day of the trial, Monday, August 25th, 1913, a large crowd, including many women, had assembled in the court room before court opened, taking up every seat in the court room. The jury were in their room about 20 feet from the court room, and as Mr. Dorsey entered the room the crowd applauded loudly by clapping of hands and stamping of feet, which the jury perhaps could have heard. The court did nothing but admonish the people that if the applause was repeated, he would clear the court room.

(g) On Monday the last day of the trial after the argument of counsel had been had and the charge of the court had been given and the case was in the hands of the jury, when Solicitor Dorsey left the court room a very large crowd awaited him in front of the court house and shouted and applauded by clapping their hands and shouting, "Hurrah for Dorsey."

(h) When it was announced that the jury had agreed upon a verdict, the Judge of the Superior Court, his Honor, L. S. Roan, went to the court house which was a comparatively small room on the first floor, at the junction of Hunter and Pryor Streets, and found the court room packed with spectators. Fearful of misconduct among the spectators in the court room, the

Court of his own motion cleared the room before the jury announced their verdict. When the verdict of guilty was rendered, the fact of the rendition of such verdict was signaled to the crowd on the outside, which consisted of a large concourse and crowd of people standing upon Hunter and Pryor Streets. Immediately upon receiving such signal and while the court was engaged in polling the jury and before the polling ended, great shouts arose from the people on the outside, expressing gratification. Great applauding, shouting and halloing was heard on the streets and so great became the noise on the streets that the Court had difficulty in hearing the responses of the jurors as he polled them. These incidents showed, as the defendant contends, that the defendant did not have a fair and impartial jury trial and that the demonstration of the crowds attending court was such as to inevitably affect the jury.

The exhibits hereto attached marked J to AA inclusive are made a part of this ground.

66. Because that fair and impartial trial guaranteed him by the Constitution of this State was not accorded the defendant for the following reasons:

The court room wherein this trial was had was situated at the corner of Hunter and Pryor streets. There are a number of windows on the Pryor Street side looking out upon the street and furnishing easy access to any noises that would occur upon the street. The court room itself is situated on Hunter Street, 15 or 20 feet from Pryor Street. There is an open alleyway running from Pryor St., along by the side of the court house, and there are windows from the court room looking on to this alley and any noise in the alley can easily be heard in the court room. When Solicitor Dorsey left the court room on the last day of the trial, after the case had been submitted to the jury, a large and boisterous crowd of several hundred people was standing in the street in front of the court house and as he came out greeted him with loud and boisterous applause, taking him upon their shoulders and carrying him across the street into the Kiser building wherein was his office. This crowd did not wholly disperse during the interval between the giving of the case to the jury and the time when the jury reached its verdict, but during the whole of such time a large crowd was gathered at the junction of Pryor and Hunter streets. When it was announced that the jury had reached a verdict, his Honor, Judge L. S. Roan, went to the court room and found it crowded with spectators to such an extent as to interfere with the court's orderly procedure, and fearing misconduct in the court room, his Honor cleared it of spectators. The jury was then brought in for the purpose of delivering their verdict. When the verdict of guilty was announced, a signal was given to the crowd on the outside to that effect. The large crowd of people standing on the outside cheered and shouted and hurrahed at the outset of the poll of the jury, and before more than one juror had been polled to such an extent that the Court had some difficulty in proceeding with the poll of the jury, which was then in progress, and not finished. Indeed, so great was the noise and confusion without that the Court heard the responses of the jurors during the polling with some difficulty. The Court was about 10 feet from the jury. In the court room was the jury, lawyers, newspaper men, and officers of the court, and among them there was no disorder.

The polling of the jury is an important part of the trial. It is inconceivable that any juror, even if the verdict was not his own, to announce that it was not, in the midst of the turmoil and strife without.

The exhibits J to AA inclusive are hereby made a part of this ground, and the Court will err if it does not grant a new trial on this ground.

67. Because the Court erred in failing to charge the jury that if a witness knowingly and wilfully swore falsely in a material matter, his testimony shall be rejected entirely, unless it be corroborated by facts and circumstances of the case or other creditable evidence.

The Court ought to have given this charge, although no written request was formally made therefor, for the reason that the witness Jim Conley, who testified as to aiding Frank in the disposal of the body, was attacked by the defendant as utterly unworthy of belief, and he admitted upon the stand that he knew that he was lying in the affidavits made by him, with reference to the crime and before the trial.

Especially ought this charge to have been given, because the Court, in his charge to the jury, left the question of the credibility of witnesses to the jury, without any rule of law to govern them in determining their credibility.

68. Because the Court permitted to be read to the jury, over the objection of the defendant made at the time the testimony was offered, that same was immaterial, irrelevant, incompetent, and not binding upon Frank a part of an affidavit made by the witness Minola McKnight, as follows:

> ''They pay me $3.50 a week, but last week she paid me $4, and one week she paid me $6.50. Up to the time of this murder I was getting $3.50 per week and the week right after the murder I don't remember how much she paid me, and the next week they paid me $3.50 and the next week they paid me $6.50, and the next week they paid me $4, and the next week they paid me $4. One week, I don't remember which one, Mrs. Selig gave me $5, but it wasn't for my work, and they didn't tell me what it was for, she just said 'Here is $5 Minola.' ''

The Court permitted this part of the affidavit to be read to the jury over the objections above stated, and in doing so erred for the reasons stated.

This was prejudicial to the defendant, inasmuch as it permitted the affidavit of the witness Minola McKnight to be read to the jury as to transactions between herself and the Seligs, with which Frank had no connection, but which the solicitor-general insisted showed that Frank's relatives were seeking to influence this darkey by paying her money in addition to that which she earned. The Seligs and Minola McKnight had been asked on cross examination if these statements in this affidavit were true, and had denied that these statements were true.

69. Because the Court erred in permitting Mr. Hooper, for the State, to argue to the jury that the failure of the defense to cross-examine the female witnesses who, in behalf of the State, had testified to the bad character of Frank for lasciviousness, was strong evidence of the fact that, if the defendant had cross-examined them, they would have testified to individual incidents of immorality on the part of Frank; that the defendant's knowledge that they would bring out such incidents was the reason for not cross-examining the witnesses; and that the jury could, therefore, reasonably know that Frank had been guilty of specific incidents of immorality other than those brought out in the record.

The defendant strenuously objected to this line of argument on the part of Mr. Hooper and urged the Court to state to the jury that the failure to cross-examine any of said witnesses justified no inference on the part of the jury that the cross-examination, if had, would have brought out anything hurtful to the general character of Frank.

This the Court declined to do and permitted the argument; and, in so doing, committed error, for which a new trial should be granted.

70. Because the solicitor-general, in his argument to the jury, stated, as follows: "The conduct of counsel in this case, as I stated, in refusing to cross-examine these twenty young ladies, refutes effectively and absolutely that he had a good character. As I said, if this man had had a good character, no power on earth could have kept him and his counsel from asking where those girls got their information, and why it was they said that this defendant was a man of bad character. Now, that is a common sense proposition; you'd know it whether it was in a book or not. I have already shown you that under the law, they had the right to go into that character, and you saw that on cross-examination they dared not do it. . . . Whenever anybody has evidence in their possession, and they fail to produce it, the strongest presumption arises that it would be hurtful if they had; and their failure to introduce evidence is a circumstance against them. You don't need any law book to make you know that; that is true, because your common sense tells you that whenever a man can bring the evidence, and you know that he has got it and don't do it, the strongest presumption arises against him. And you know, as twelve honest men seeking to get at the truth, that the reason these able counsel did not ask those hair-brained fanatics, as Mr. Arnold called them before they had ever gone on the stand—girls whose appearance is as good as any they brought, girls that you know by their manner on the stand are speaking the truth, girls who were unimpeached and unimpeachable, the reason they didn't ask them. Why? They dared not do it. You know it; if it had never been put in the law books, you would know it."

This address of the solicitor was made in the hearing, and in the presence of the jury, without any protest or comment on the part of the Court.

The defendant made no objection to this argument at the time same was being had, for the reason that similar argument made by Mr. Hooper had been objected to by counsel, and their objection overruled. The objection made to the argument of Mr. Hooper was not here repeated, for the reason that the Court had stated, in the outset of the case, that objection once noted in the record need not in similar instances be repeated, but that the Court would assume that similar objections had been made and overruled.

This argument of the Solicitor was not only illegal, but prejudicial to the defendant, in that he, in substance, urged upon the jury that a cross-examination of female witnesses for the State, who testified to Frank's bad character for lasciviousness, would, upon cross-examination, have testified as to specific acts of immorality against him.

71. Because the Court permitted the solicitor, over the objection of defendant's counsel, to argue before the jury that the wife of the defendant did not speedily visit him when he was first taken under arrest, and that her failure to do so showed a consciousness on her part that her husband was not innocent.

In addressing this question to the jury, the solicitor said: "Do you tell me that there lives a true wife, conscious of her husband's innocence, that would not have gone through snap-shotters, reporters, and everything else to have seen him? Frank said that his wife never went there because she was afraid that the snap-shotters would get her picture, because she didn't want to go through the line of snap-shotters. I tell you, gentlemen of the jury, that there never lived a woman conscious of the rectitude and innocence of her husband who would not have gone through snap-shotters, reporters, and the advice of any rabbi under the sun—and you know it."

Defendant's counsel objected to this line of argument, when the same was being made, upon the ground that the conduct of his wife could in no sense be used as evidence of Frank's guilt, and that the solicitor had no right to argue as he did.

The Court declined to stop the argument, but permitted it to continue. The solicitor impassionately argued it to the jury—that Mrs. Frank's conduct in not visiting her husband was strong evidence of his guilt.

This argument was highly prejudicial to the defendant, and the Court erred in permitting it to be made and in not reprimanding the solicitor-general for the making of such an argument.

72. Because the Court permitted the solicitor-general, in arguing the relative value of the expert testimony delivered by the physicians called for the State and defense, to intimate that the defense, in calling its physicians,

had been influenced by the fact that certain physicians called were the family physicians of some of the jurors. In discussing it, the solicitor said: "It would not surprise me if these able, astute gentlemen, vigilent as they have shown themselves to be, did not go out and get some doctors who have been the family physicians, who are well known to some of the members of this jury, for the effect it might have upon you; and I am going to show that there must have been something besides the training of these men, and I am going to trace them with our doctors. I can't see any other reason in God's world for getting out and getting these practitioners, who have never had any special training on stomach analysis, and who have not had any training on the analysis of tissues—like a pathologist has had, except upon that theory."

Objection was made to this argument of the solicitor, at the time it was being made, upon the ground that there was no evidence to support any such argument; that it was illegal, prejudicial, and highly improper.

73. Because the juror, A. H. Henslee, was not a fair and impartial juror, but was prejudiced against the defendant when he was selected as a juror, had previously thereto formed and expressed a decided opinion as to the guilt of the defendant; and, when selected as a juror, was biased against the prisoner in favor of the State. Affidavits are hereto attached and marked Exhibits A, B, C, D, E, I, BB, CC, DD, EE and JJ, KK, LL, MM, NN, which are hereby made a part of this motion for new trial. Affidavits sustaining the character of the witnesses against said Henslee are hereto attached, marked Exhibits FF, GG, HH, and II.

The conduct of this juror, as shown by the affidavits and other evidence, the condition, conduct, and state of mind of this juror is conclusive that the defendant did not have a fair and impartial jury trial, as provided by the laws and the Constitution of this State; and a new trial should be granted. Upon failure to do so, the Court will commit error.

74. Because the juror, Johenning, was not a fair and impartial juror, in that he had a fixed opinion that the defendant was guilty prior to, and at the time he was taken on the jury and was not a fair and impartial and unbiased juror. Affidavits showing that he was not a fair and impartial juror are hereto attached and marked Exhibits E, F, G, K, and I, and made a part of this motion for new trial.

The opinion, conduct, and state of mind of this juror prior to, and at the time of, his selection as a juror shows that the defendant did not have a fair and impartial trial, as provided by the laws and the Constitution of this State; and, because of the unfairness and impartiality of this juror, a new trial should be granted, and the Court will commit error in not granting it.

75. Because this defendant, as he contends, did not have a fair and impartial jury trial, guaranteed to him under the laws of this State, for the following reasons, to-wit:

Public sentiment seemed to the Court to be greatly against him. The court room was a small room, and during the argument of the case so far as the Court could see about every seat in the court room was taken, in and without the bar, and the aisles at each end of the court room were packed with spectators. The jury, in going from the jury seats to the jury room, during the session of the court, and in going to and from the court room morning, evening and noon, were dependent upon passage-ways made for them by the officers of court. The bar of the court room itself was crowded, leaving only a small space to be occupied by counsel in their argument to the jury. The jury-box, when occupied by the jury, was inclosed by the crowd sitting and standing in such close proximity thereto that the whispers of the crowd could be heard during a part of the trial. When the Court's attention was called to this he ordered the sheriff to move the crowd back, and this was done.

X

During the argument of the solicitor, Mr. Arnold of counsel for the defense, made an objection to the argument of the solicitor, and the crowd laughed at him, and Mr. Arnold appealed to the Court.

On Saturday, prior to the rendition of the verdict on Monday, the Court was considering whether or not he should go on with the trial during Saturday evening, or to what hour he should extend it in the evening, the excitement in and without the court room was so apparent as to cause apprehension in the mind of the Court as to whether he could safely continue the trial during Saturday afternoon; and, in making up his mind about the wisdom of thus continuing the trial, his Honor conferred with, while on the stand, and in the presence of the jury, the chief of police of Atlanta and the colonel of the Fifth Georgia regiment stationed in Atlanta conferred with his Honor. Not only so, but the public press, apprehending trouble if the case continued on Saturday, united in a request to the Court that he not continue the Court on Saturday evening. The Court, being thus advised, felt it unwise to extend the case on Saturday evening, and continued it until Monday morning. It was evident on Monday morning that the public excitement had not subsided, and that it was as intense as it was on Saturday previous. The same excited crowds were present, and the court house was in the same crowded condition. When the solicitor entered the court room he was met with applause by the large crowd—ladies and gentlemen present by stamping their feet and clapping their hands, while the jury was in their room about twenty feet away.

While Mr. Arnold, of the defense, was making a motion for a mistrial, and while taking testimony to support it before the Court, the crowd applauded when the witness testified that he did not think the jury heard the applause of the crowd on Friday of the trial. The jury was not in the court room, but were in the jury room about 20 feet away.

When the jury was finally charged by the Court, and the case submitted to them, and when Mr. Dorsey left the court room, a large crowd on the outside of the court house, and in the streets, cheered by yelling, and clapping hands, and yelling "Hurrah for Dorsey!"

When it was announced that the jury had agreed upon a verdict, crowds had thronged the court room to such an extent that the Court felt bound to clear the court room before receiving the verdict. This the Court did. But, when the verdict of the jury was rendered, a large crowd had thronged the outside of the court house; someone signaled to the outside what the verdict was, and the crowd on the outside raised a mighty shout of approval. So great was the shouting and applause on the outside that the Court had some difficulty in hearing the response of the jurors as he called them.

The defendant was not in the court room when the verdict was rendered, his presence having been waived by his counsel. This waiver was accepted and acquiesced in by the Court, because of the fear of violence that might be done the defendant were he in court when the verdict was rendered.

When Mr. Dorsey left the court room, he was met at the court house door by a multitude, was hurrahed, cheered, taken upon the shoulders of a part of the crowd and carried partly to the building opposite, wherein he had his office.

This defendant contends that the above recital shows that he did not have a fair and impartial jury trial; that a new trial ought to be granted; and that the Court, failing to grant such new trial, will commit error.

In support of this ground of the motion movant refers to the affidavits hereto attached marked Exhibits J to AA, inclusive, and hereby made a part of this motion for new trial.

76. Because the Court erred in not leaving it to the jury to say whether or not, under the facts, the witness Conley was an accomplice.

The State insisted that Conley was watching for Frank to enable him to have connection with some girl, naturally or unnaturally; and Frank seeking to get her consent and failing killed her to insure her silence, and then employed Conley who had previously been watching for him to enable him to conceal her body.

If Conley was aiding and abetting Frank in his transactions with Mary Phagan, and if, as a natural and probable result of such transaction, Mary Phagan met her death, then Conley would be an accomplice of Frank, although he had no personal part in her killing.

The Court, under proper instructions, ought to have left it to the jury to say whether Conley was or not an accomplice of Frank; and, in failing to do, and because he failed to do so the Court committed error.

77. The Court erred in not charging the jury that if, under instructions given them, they found that Conley was an accomplice of Frank, they could

not convict Frank under the testimony of Conley alone; but that, to do so, there must be a witness other than Conley or circumstances corroborating the evidence of Conley.

78. Because the Court permitted the witness, Irene Jackson, at the instance of the solicitor-general, and over the objection of the defendant, made at the time the testimony was offered, that the same was irrelevant, immaterial, illegal, and prejudicial to the defendant, to testify substantially as follows:

"I remember having a conversation with Mr. Starnes about a dressing room incident. I told him that Mr. Frank came to the door of the dressing room while Emily Mayfield was dressing. He looked and turned around and walked out—just pushed the door open and looked in. I don't know whether he smiled or not. I never noticed to see whether he smiled or not; he just kind of looked at us and turned and walked out. I didn't time him as to how long he stayed; he just came and looked and turned and walked out. At the time, Miss Emily Mayfield had off her top dress and was holding her old dress in her hand to put it on. I did not report that to the forelady, but Miss Ermilie did. I have heard remarks other than those of Miss Mayfield about Frank going into the dressing room, but I don't remember who said them. I just remember I heard something about it, two or three different times, but I don't remember anything about it, just a few times. I heard the girls talking about Mr. Frank going into the dressing room on two or three different occasions. It was the middle of the week after we started to work there; I don't remember the time. Mr. Frank also entered the dressing room when my sister was in there lying down; she just had her feet up on the table; she had them on a stool, I believe. She was dressed. I don't remember how her dress was; I didn't look. I paid no attention to him, only he just walked in and turned and walked out; looked at the girls that were sitting in the window and walked out. There was something said about this, but I don't remember. I have heard something about him going in the room and staring at them, but I don't remember exactly. Mr. Frank walked in the dressing room on Miss Mamie Kitchens. She and I were in there. I have heard this spoken of, but I don't remember. I have heard them speak of other times, when I wasn't there. Mr. Frank said nothing either time when I was there. The door was pushed to, but there was no way to fasten the door. He pushed the door open and stood in the door. The dressing room had a mirror in it. It was all one room, except there were a few lockers for the foreladies, and there was a place where the girls changed their street dresses and got into their working dresses, and vice versa. There was no way for Mr. Frank to tell before he opened the door what the condition of the girls was in there. I do not know whether he knew they were in there or not. That was the usual time for the girls to go in the dressing room, undress and get ready to go to work, changing their street clothes and putting on their working clothes. We had all registered on before we went up there in the dressing room. Mr. Frank knew the girls had stopped there to register. The day he looked in the dressing room at Miss Mayfield, he smiled, or made some kind of a face that looked like a smile—smiling at Miss Mayfield, he didn't speak or didn't say a word."

This evidence was objected to for the reasons above stated, and for the further reason that statements tending to show the conduct of Mr. Frank with girls, in going into the dressing room with girls, was intended to create prejudice in the minds of the jurors against the defendant; and, not to illustrate the question of whether he was or was not the murderer of Mary Phagan. The Court overruled these objections and let the testimony go to the jury; and in doing so, movant contends, erred for the reasons above stated.

79. Because the Court permitted the witness, Harlee Branch, at the instance of the solicitor-general, to testify to incidents at the pencil factory, wherein Conley, after having made the third affidavit, purported to re-enact the occurrence of the murder between himself and Frank, wherein the body of Mary Phagan was taken from the office floor to the cellar of the factory, the testimony permitted by the Court being substantially as follows:

> "I will have to give you the time of Conley's arrival at the factory, approximately. I was up there at twelve o'clock, and I was a few minutes late. Conley had not arrived there then. We waited until they brought him there, which was probably ten or fifteen minutes later. The officers brought Conley into the main entrance of the factory here and to the stair-case—I don't know where the stair-case is here—yes, here it is (indicating on diagram) and they carried him up here and told him what he was there for, and questioned him, and made him understand that he was to re-enact the pantomine. After a few minutes conversation, and a very brief conversation, Conley led the officers back here and turned off to his left to a place back here; I guess this is it (indicating on diagram), right where this is near some toilets, and he was telling his story as he went through there, and he said when he got up there, he went back and found this body in that place. He was talking constantly—all the time; I don't know how he made out a part of his story. Well, when he got back— After reaching this point at the rear left side of the factory, describing the position of the body, as he stated it, he stated the head was lying towards the north and the feet towards the south, as indicated, and there was a cord around the neck. He didn't state how long it took for the various movements. I didn't time it; I know the time I arrived there and the time I left the factory. Conley said when he found the body he came up to Mr. Frank—called to him some point along here I should judge (indicating on the diagram). I don't understand this diagram exactly. And he told him the girl was dead, and I don't know just exactly what Frank said. I will try to eliminate as much of that conversation as I can. Anyhow, he said he came on up to where Mr. Frank was, and that he was instructed to go to the cotton room, which he showed us; I don't know, it must be on the same side of the building about here, I judge (indicating) and he went in there. He showed us the cotton room, and he said he went back, and he did go back, led us back, and told about taking up the body, how he brought it up on his shoulder, and then, in front of a little kind of impression on the wall, he said he dropped it, and he indicated the place, and then he come up and told Mr. Frank about it—that he would have to come and help him or something like that—and that Mr. Frank came back and took the feet, I believe he said, and he took the head, and they brought the body up to the elevator and put it on the elevator. He was enacting this all the time and talking all the time. He described how the body was put on the elevator, and he said Mr. Frank run the elevator down, and he went down on the elevator. On this trip he went down in the elevator to the basement, and he said Mr. Frank helped to take the body out, and they dropped it there, and Mr. Frank told him to take it up and

carry it back, and he put the body on his shoulder and carried it back to this sawdust which is away back here, and that he came on back, and he said there was some things in here which he threw on this trash pile, and Mr. Frank, he said, was up in the cubby hole, he said—somewhere back there—and later he led us up there—and that Mr. Frank told him to run the elevator up; so Conley and the officers and the rest of us who were with him came up in the elevator; and when they got to the first floor, just before getting to the first floor, he said this was where Mr. Frank got on the elevator. Mr. Frank was waiting there for him. Then they brought the elevator on up to the second floor, and he had them to stop the elevator, just, I suppose, a foot or a little more below the landing; and he said Mr. Frank jumped off when the elevator was about that point, and after getting up, he said Mr. Frank went around the elevator to a sink that he showed us back of the elevator, to wash his hands; and he waited out in front and he said he shut off the power while Mr. Frank was gone around there; and when Mr. Frank came back, they went in the office, and he led us on in the office through—there is an outer office there, and he came in this way and come through in this office back here, this inner office, and he indicated Mr. Frank's desk and a desk right behind it;—I presume this is the two desks (indicating); that Mr. Frank sat down in the chair at that desk, and he told him to sit at the other desk, and Mr. Frank told him to write some notes; and he was asked by some of the officers to write what Mr. Frank told him to write, and he sat down there and wrote one note, and I believe —I know the note he wrote, and I don't know whether he wrote one or two, and that Mr. Frank handed him some money and that later he took it back, and I don't remember whether he gave him the cigarettes and money before or after this, I don't recall. Anyway, when he was in here, after he had written the notes for the officers, I found it was time for me to get in the office with my copy. He hadn't finished; he was still sitting there; and I telephoned in to the office for relief—someone to relieve me—and I went to the office and I left him there in the office, and I went in. I judge it was about a quarter past twelve when Conley got there. I must have gotten there five minutes before that time. I left about one o'clock. They rushed Conley right up the steps and, probably two or three minutes after he got up there, he began this enactment, and he went very rapidly—we sort of trotted to keep behind him. Questions were constantly asked him by four or five of the officers. I have cut out a good deal of Conley's talking; just how much, I have no way of indicating. He was talking constantly, except when interrupted by questions. I didn't time it when I got there. When I got to the office from the police station it was ten minutes after twelve and I walked down just about a block and a half. Conley got there, I should say, about five minutes after I did. I left a little after one, probably five or ten minutes. It would be a difficult thing for me to estimate how much time it took Conley to enact what he did, leaving out the conversation he had with different men. While he was acting, he was acting very rapidly; he kept us on the trot. There is no way for me to give you my opinion as to how long it took Conley to go through that demonstration; there was no way to disassociate the time and find out the difference between the two—between the time he was acting and talking. I didn't attempt to do that."

The defendant objected to this testimony, because:

(a) This so-called experiment made with Conley was solely an endeavor on their part to justify his story.

(b) The sayings and actings of Conley, as aforesaid, not under oath, had and made without cross-examination, and reported by the witness to the Court, the net result of which is a repetition of Conley's statement, without the sanction of an oath.

(c) That Conley went to the factory immediately after making his last affidavit; that that last affidavit is not the way he tells the story on the stand; that he tells it wholly differently on the stand; at least differently in many particulars; that it can not help the jury for Conley to go to illustrate that affidavit when he says now on the stand that much of it was a lie, and that it did not happen that way at all; that this evidence was of another transaction, not binding upon this defendant.

The Court overruled the objection and admitted the testimony to the jury; and, in doing so, committed error, for the reasons above stated.

80. Because the Court, over objection of the defendant, made at the time the evidence was offered, that the same was immaterial, incompetent, illegal and prejudicial to the defendant, permitted the solicitor-general to ask the following questions, and the witness, Miss Maggie Griffin, to make the following answers:

Q. Are you acquainted with the general character of Leo M. Frank for lasciviousness; that is his relations with women?

A. Yes, sir.

The Court admitted the above question and answer, over the objection of the defendant as above stated, and thereby erred, for the reasons stated.

81. Because the Court, over objection of the defendant, made at the time the evidence was offered, that the same was immaterial, incompetent, illegal and prejudicial to the defendant, permitted the solicitor-general to ask the following questions, and the witness, Miss Myrtie Cato, to make the following answers:

Q. Miss Cato, I want to ask you one other question, also. Are you acquainted with the general character of Leo M. Frank for lasciviousness; that is, his relations towards women?

A. Yes, sir.

Q. Is it good or bad?

A. Bad.

The Court admitted the above questions and answers, over objection of the defendant as above stated, and thereby erred, for the reasons stated.

82. Because the Court, over objection of the defendant, made at the time the evidence was offered, that the same was immaterial, incompetent, illegal and prejudicial to the defendant, permitted the solicitor-general to ask the following questions, and the witness, Mrs. H. R. Johnson, to make the following answers:

Q. Now, are you acquainted with his (Frank's) general character for lasciviousness; that is, his general character towards women generally?

A. No, sir, not very much.

Q. Not very much? Well, answer the question: yes or no; are you acquainted?
A. All right, she said, not very much.
The Court admitted the above questions and answers, over the objection of defendant as above stated, and thereby erred, for the reasons stated.

83. Because the Court, over the objection of the defendant, made at the time the evidence was offered, that the same was immaterial, incompetent, illegal and prejudicial to the defendant, permitted the solicitor-general to ask the following questions, and the witness, Miss Marie Carst, to make the following answers:

Q. Bad; now, Miss Carst, I will ask you if you are acquainted with his (Frank's) general character for lasciviousness; that is, his attitude towards girls and women?
A. Yes, sir.
Q. Is that character good or bad?
A. Bad.
The Court admitted the above questions and answers, over the objection of the defendant as above stated, and thereby erred, for the reasons stated.

84. Because the Court, over the objection of the defendant, made at the time the evidence was offered, that the same was immaterial, incompetent, illegal and prejudicial to the defendant, permitted the solicitor-general to ask the following questions, and the witness, Miss Nellie Pettis, to make the following answers:

Q. Are you acquainted with his (Frank's) general character for lasciviousness; that is, with women prior to that time?
A. Yes, sir.
Q. Is it good or bad?
A. Bad.
The Court admitted the above questions and answers, over objection of the defendant as above stated, and thereby erred, for the reasons stated.

85. Because the Court, over the objection of the defendant, made at the time the evidence was offered, that the same was immaterial, incompetent, illegal and prejudicial to the defendant, permitted the solicitor-general to ask the following questions, and the witness, Miss May Davis, to make the following answers:

Q. I want to ask you another question. Are you acquainted with the general character of Leo M Frank, prior to April 26, 1913, as to lasciviousness; that is, his relations with girls and women?
A. Yes.
Q. Is that good or bad?
A. Bad.
The Court admitted the above questions and answers, over objection of the defendant as above stated, and thereby erred, for the reasons stated.

86. Because the Court, over the objection of the defendant, made at the time the evidence was offered, that the same was immaterial, incompetent,

illegal and prejudicial to the defendant, permitted the solicitor-general to ask the following questions, and the witness, Mrs. Mary E. Wallace, to make the following answers:

Q. I will ask you now if you are acquainted with his general character for lasciviousness; that is, as to his (Frank's) attitude towards girls and women?

A. Yes, sir.

Q. Is that good or bad?

A. Bad.

The Court admitted the above questions and answers, over the objection of the defendant as above stated, and thereby erred, for the reasons stated.

87. Because the Court, over the objection of the defendant, made at the time the evidence was offered, that the same was immaterial, incompetent, illegal and prejudicial to the defendant, permitted the solicitor-general to ask the following questions, and the witness, Miss Estelle Winkle, to make the following answers:

Q. Are you acquainted with his (Frank's) general character for lasciviousness; that is, his relations with girls and women?

A. Yes, sir.

Q. Is that good or bad?

A. Bad.

The Court admitted the above questions and answers, over objection of defendant, made at the time the evidence was offered, and thereby erred, for the reasons stated.

88. Because the Court erred, over the objection of the defendant that the same was irrelevant and immaterial and prejudicial to defendant, in permitting the witness, Louis Ingram, to testify as follows:

"I am a conductor for the Georgia Railway & Power Co. I come to town ahead of them cars coming in on English Avenue going to Cooper Street, known as the English Avenue car. I have seen them come in and been on it when it come in, the English Avenue car due at the junction of Marietta and Broad Streets according to schedule at 12:07. I have seen the car due at Marietta and Broad streets according to schedule at 12:07, the English Avenue car, several times come in ahead of the car I was coming in on, as much ahead as four minutes. I saw a car that came in this morning that was due in town at 8:30 and it got in at 8:24. I know the Motorman Matthews. I have seen his car ahead of time. I could not say how often."

The Court permitted this testimony over the objection before stated, and in doing so erred for the reasons stated. This was prejudicial to the defendant because it tended to show that at times other than on the day of the murder, the English Avenue car, which on that day was run by the witness, Motorman Matthews, had reached Marietta and Broad Streets four minutes ahead of time. It became material to determine what time this English Avenue car reached Broad Street on the day of the murder. The Motorman Matthews and the conductor, swore that on that day the English

Avenue car reached Broad Street at 12:07. The Court permitted this and other like testimony to be introduced as tending to discredit their statements that the car was on schedule time that day. In doing this the Court erred, for the fact that the English Avenue car was ahead of time as much as four minutes on other days did not indicate that it was ahead of time on the day of the murder.

89. Because the Court erred, over the objection of the defendant that the same was irrelevant and immaterial and prejudicial to defendant, in permitting the witness, W. D. Owens, to testify as follows:

"I run on what is known as Route Eight, White City to Howell Station, for the Georgia Railway & Power Co. We were due in town at 12:05. My schedule is ahead of the Cooper Street and English Avenue schedule two minutes. I have known the English Avenue and Cooper Street car to get to the junction of Marietta and Broad Streets ahead of my car. The English Avenue car is due there at 12:07; my schedule at 12:05. I have known the English Avenue car to get there as much as two minutes ahead of us. That would make the English Avenue car four minutes ahead of time. I have known this to occur after April 26th. I don't know whether it occurred prior to that time."

The Court permitted this testimony over the objection before stated, and in doing so erred for the reasons stated. This was prejudicial to the defendant because it tended to show that at times other than on the day of the murder, the English Avenue car, which on that day was run by the witness, Motorman Matthews, had reached Marietta and Broad Streets four minutes ahead of time. It became material to determine what time this English Avenue car reached Broad Street on the day of the murder. The Motorman Matthews and the conductor, swore that on that day the English Avenue car reached Broad Street at 12:07. The Court permitted this and other like testimony to be introduced as tending to discredit their statements that the car was on schedule time that day. In doing this the Court erred, for the fact that the English Avenue car was ahead of time as much as four minutes on other days did not indicate that it was ahead of time on the day of the murder.

90. Because of the following colloquy which occurred during the trial and while the witness, John Ashley Jones, was on the stand, during the cross-examination of Jones by the solicitor:

Q. You never heard anybody down there say anything about Mr. Frank's practices and relations with the girls.

A. Not in the Pencil Factory.

Q. Not at all? You never did talk to any of these young girls, did you?

A. No, I don't happen to know any of them.

Q. Or any of the men?

A. No.

Q. You don't know what kind of practices Mr. Frank may have carried on down there in the Pencil Factory?

A. No.

Q. You don't know, you never heard anybody say that Mr. Frank would take girls in his lap in his office here?

A. No.

(Here objection was made by Mr. Arnold.)

The Court: On cross examination he can ask him if he has heard of certain things.

Mr. Arnold: Up to April 26th?

The Court: Yes, sir.

Mr. Dorsey: I am not four-flushing or any such thing; I am going to bring the witnesses here.

Q. You never heard of Frank going out there to Druid Hills and being caught did you, before April 26th?

A. No, but our reporter, it was his business to find out, and if he had found it out, he certainly would not have issued such a policy.

Q. Now, about twelve months ago, you never heard of Frank kissing girls and playing with their nipples on their breast around there?

A. No, I never heard such a thing.

Q. You never heard of that at all?

A. I never heard that. I had been in Mr. Frank's—

Q. You never talked to Tom Blackstock, then, did you?

A. I haven't the pleasure of Mr. Blackstock's acquaintance.

Q. Did you ever know Mrs. L. D. Coursey?

A. I can't say that I ever heard of her.

Q. Miss Myrtie Cato, you never heard of her, and that he would go into the—

A. Mr. Dorsey, I have been down there.

By the Court: He wants to know if you ever heard of that before.

Q. He made no apology and no explanation, but just walked right on in there when they were lying on the couch?

A. I never heard that.

Q. Did you ever hear of his putting his arms around Myrtie Cato in the office?

A. No, sir.

Q. Did you ever hear about the time he went in on little Gertie Jackson that was sick, lying in the dressing room with her dress up, and stood up there and looked at her, and hear any talk of the girls there about his attitude?

A. No, sir.

Q. Did you ever hear about his frequently going into the dressing room with Vernie McDaniel?

A. No, sir.

Q. Did you ever hear of the time it was said that Miss Pearl Darlson —about five years ago, when he held out the money in one hand and put his hand on the girl, that she threw the monkey wrench at him? You never heard of that time?

A. No, sir.

Q. Did you ever talk to Mrs. Martin Donegan?

A. No, sir, not that I know of.

Q. Did you ever hear them say that he paid special attention to the girls, and winked and smiled at them, and had nude pictures hung up in his office, and walked around and slapped the girls on the seat?

A. No, sir.

Q. Miss Wingate, 34 Mills Street, did you ever talk to her about Frank?

A. No, sir, I don't know her.

Q. Did you ever hear C. D. Donegan talk about Frank?

A. No, sir.

Q. You never heard any of these factory people talk about him?

A. No, sir.

The Court erred in permitting the solicitor, although the witness denied hearing all of the remarks referred to, to say in the presence of the jury that he was not four-flushing, but that he was going to bring the witnesses there, thereby improperly saying to the jury that he had such witnesses and meant to bring them in.

The Court erred in not withdrawing this whole subject from the jury and in not rebuking the solicitor-general for injecting the questions in the case and asserting that he had witnesses to prove the things asked about.

These suggestions and intimations of the solicitor-general were exceedingly prejudicial to the defendant, and for making them he ought to have been severely rebuked by the Court, and failure of the Court to do so was cause for a new trial.

91. Because the Court erred in charging the jury as follows:

"Is Leo M. Frank guilty? Are you satisfied on that beyond a reasonable doubt from the evidence in this case? Or is his plea of not guilty the truth?"

The Court erred in putting the proposition of the defendant's guilt or innocence to the jury in this manner, because the effect of the same was to put the burden upon the defendant of establishing his plea of not guilty, and the further effect was to impress upon the jury that unless they believed that the defendant's plea of not guilty was the truth that they could not acquit. The tendency of this charge was to impress upon the jury that they were to consider only upon the one side as to whether they believed Leo M. Frank guilty or upon the other side they were to consider only the question of whether they believed his plea of not guilty, and there was no middle ground in the case. And movant says that the error in this charge is that it leaves entirely out of view the consideration of the third proposition which the jury had the right to consider, and that is as to whether, even though they did not believe his plea of not guilty the truth, still if they had a reasonable doubt in their minds of his guilt they should acquit him.

92. Movant further says that a new trial should be granted because of the following:

Mr. Dorsey, the solicitor-general, in the concluding argument, made the following statement:

"Now, gentlemen (addressing the jury) Mr. Arnold spoke to you about the Durant case. That case is a celebrated case. It was said that that case was the greatest crime of the century. I don't know where Mr. Arnold got his authority for the statement that he made with reference to that case. I would you like to know it."

Whereupon the following colloquy occurred:

Mr. Arnold: I got it out of the public prints, at the time, Mr. Dorsey, published all over the country, I read it in the newspapers, that's where I got it.

Mr. Dorsey (resuming): On April 15, 1913, Mr. C. M. Pickett, the district attorney of the City of San Francisco, wrote a letter—

Mr. Arnold: I want to object to any communication between Mr. Pickett and Mr. Dorsey—it's just a personal letter from this man, and I could write to some other person there and get information satisfactory to me, no doubt, just as Mr. Dorsey has done, and I object to his reading any letters or communications from anybody out there.

Mr. Dorsey: This is a matter of public notoriety. Here's his reply to a telegram I sent him, and in view of his statement, I have got a right to read it to the jury.

Mr. Arnold: You can argue a matter of public notoriety, you can argue a matter that appears in the public prints—my friend can, but as to his writing particular letters to particular men, why that's introducing evidence, and I must object to it; he has got a right to state simply his recollection of the occurrence, or his general information on the subject, but he can't read any letters or telegrams from any particular people on the subject.

Mr. Dorsey: Mr. Arnold brought this in, and I telegraphed to San Francisco, and I want to read this telegram to the jury; can't I do it?

Mr. Arnold: If the Court please I want to object to any particular letter or telegram,—I can telegraph and get my information as well as he can, I don't know whether the information is true, I don't know who he telegraphed about it; I have got a right to argue a matter that appears in the public prints, and that's all I argued,—what appears in the papers,—it may be right or wrong, but if my friend has a friend he knows there, and writes and gets some information, that's introducing evidence, and I want to put him on notice that I object to it. I have got the same right to telegraph there and get my own information. And besides, my friend seems to know about that case pretty well, he's writing four months ago. Why did he do it?

Mr. Dorsey (resuming): Because I anticipated some such claim would be made in this presence.

Mr. Arnold: You anticipated it, then, I presume, because you knew it was published; that's what I went on.

Mr. Dorsey (resuming): I anticipated it, and I know the truth about that case.

Mr. Arnold: I object to his reading any communication unless I have the right to investigate it also; I am going only on what I read in the public press. April 15th is nearly two weeks before the crime is alleged to have been committed. I want to record an objection right now to my friend doing any such thing as that, reading a telegram from anybody picked out by my friend Dorsey, to give him the kind of information he wants for his speech, and I claim the right to communicate out there myself and get such information as I can, if he's given the right to do it.

The Court: I'll either have to expunge from the jury what you told the jury, in your argument, or—

Mr. Arnold: I don't want it expunged. I stand on it.

The Court: I have either got to do one of the two—

Mr. Dorsey: No, sir, can't I state to this jury what I know about it, as well as he can state what he knows?

Mr. Arnold: Certainly he can, as a matter of public notoriety, but not as a matter of individual information or opinion.

The Court: You can state, Mr. Dorsey, to the jury, your information about the Durant case, just like he did, but you can't read anything—don't introduce any evidence.

Mr. Dorsey (resuming): My information is that nobody has ever confessed the murder of Blanche Lamont and Minnie Williams. But, gentlemen of the jury, as I'll show you by reading this book, it was proved at the trial, and there can be no question upon the fact, Theodore Durant was guilty, the body of one of these girls having been found in the belfry of the church in question, and the other in the basement. Here's the book containing an account of that case, reported in the 48 Pacific Reporter, and this showed, gentlemen of the jury, that the body of that girl, stripped stark naked, was found in the belfry of Emanuel church, in San Francisco, after she had been missing for two weeks. It shows that Durant was a medical student of high standing, and a prominent member of the church, with superb character, a better character than is shown by this man, Leo M. Frank, because not a soul came in to say that he didn't enjoy the confidence and respect of every member of that large congregation, and all the medical students with whom he associated. Another thing, this book shows that the crime was committed in 1895, and this man Durant never mounted the gallows until 1898, and the facts are that his mother took the remains of her son and cremated them, because she didn't want them to fall into the hands of the medical students, as they would have done in the State of California, had she not made the demand and received the body. Hence, that's all poppy-cock he was telling you about. There never was a guiltier man, there never was a man of higher character, there never was a more courageous jury or better satisfied community, than Theodore Durant, the jury that tried him, and the people of San Francisco, where he lived and committed his crime and died.

Movant says that a new trial should be granted, because of the fact that the Court did not squarely and unequivocally rule that the jury should not consider the statement Mr. Dorsey made as to the letter C. M. Pickett, the district attorney, had written, and that a new trial should be granted because the argument was illegal, unwarranted, not sustained by the evidence, and tended to inflame and unduly prejudice the jury's mind. Neither the letter from Pickett, nor the telegram was read further than is shown in the foregoing statement.

93. The movant says that a new trial should be granted because of the following ground:

The solicitor-general having, in his concluding argument, made the various statements of fact about the Durant case, as shown in the preceding ground of this motion, the judge erred in failing to charge the jury as follows, to-wit:

"The jury are instructed that the facts in other cases read or stated in your hearing are to have no influence upon you in making your verdict. You are to try this case upon its own facts and upon the opinion you entertain of the evidence here introduced."

94. Movant says that a new trial should be granted because of the following ground:

The solicitor-general having, in his concluding argument, made the various statements of fact about the Durant case, as shown in the preceding ground of this motion, the judge erred in failing to charge the jury as follows, to-wit:

"The jury are instructed that the facts in other cases read or stated in your hearing are to have no influence upon you in making your verdict. You are to try this case upon its own facts and upon the opinion you entertain of the evidence here introduced."

95. Because the Court should have given in charge the instruction set forth in the preceding ground, because of the following argument made by the solicitor-general, in his concluding argument to the jury, said argument being a discussion of the facts of other cases, and requiring such charge as was requested, the remarks of the solicitor-general, in conclusion, being as follows:

"Oscar Wilde, an Irish knight, a literary man, brilliant, the author of works that will go down the ages—Lady Windemere's Fan, De Profundis, which he wrote while confined in jail; a man who had the effrontery and the boldness, when the Marquis of Queensbury saw that there was something wrong between this intellectual giant and his son, sought to break up their companionship; he sued the Marquis for damages, which brought retaliation on the part of the Marquis for criminal practices on the part of Wilde, this intellectual giant; and wherever the English language is read, the effrontery, the boldness, the coolness of this man, Oscar Wilde, as he stood the cross-examination of the ablest lawyers of England—an effrontery that is characteristic of the man of his type,—that examination will remain the subject matter of study for lawyers and for people who are interested in the type of pervert like this man. Not even Oscar Wilde's wife—for he was a married man and had two children,—suspected that he was guilty of such immoral practices, and, as I say, it never would have been brought to light probably, because committed in secret, had not this man had the effrontery and the boldness and the impudence himself to start the proceeding which culminated in sending him to prison for three long years. He's the man who led the aesthetic movement; he was a scholar, a literary man, cool, calm, and cultured, and as I say, his cross-examination is a thing to be read with admiration by all lawyers, but he was convicted, and in his old age, went tottering to his grave, a confessed pervert. Good character? Why, he came to America, after having launched what is known as the 'aesthetic movement' in England, and throughout this country lectured to large audiences, and it is he who raised the sunflower from a weed to the dignity of a flower. Handsome, not lacking in physical or moral courage, and yet a pervert, but a man of previous good character. Abe Ruef, of San Francisco, a man of his race and religion, was the boss of the town, respected and honored, but he corrupted Schmitt, and he corrupted everything that he put his hands on, and just as a life of immorality, a life of sin, a life in which he fooled the good people when debauching the poor girls with whom he came in contact, has brought this man before this jury, so did eventually Abe Ruef's career terminate in the penitentiary. I have already referred to Durant. Good character isn't worth a cent when you have got the case before you. And crime don't go only with the ignorant and the poor. The ignorant, like Jim Conley, as an illustration, commit the small crime, and he doesn't know anything about some of this higher type of crimes but a man of high intellect and wonderful endowments which, if directed in the right line, bring honor and glory; if those same faculties and talents are perverted and not controlled, as was the case with this man, they will carry him down. Look at McCue, the mayor of Charlottesville; a man of such reputation that the people elevated him to the head of that municipality, but notwithstanding that good reputation, he didn't have rock-bed character, and becoming tired of his wife, he shot her in the bath-tub, and the jury of gallant and noble and courageous Virginia gentlemen, notwithstanding his good character, sent him to a felon's grave. Richeson, of Boston, was a preacher, who enjoyed the confidence of his flock. He was engaged to one of the wealthiest and most fascinating women in Boston, but an entanglement with a poor little girl, of whom he wished to rid himself, caused this man, Richeson to so far forget his character and reputation and his career as to put her to death. And all these are cases of circumstantial evidence. And after conviction, after he had fought, he at last admitted it, in the hope that the governor would at last save his life, but he didn't do it, and the Massachusetts jury and the Massachusetts governor were courageous enough to let that man who had taken that poor girl's life to save his reputation as the pastor of his flock, go, and it is an illustration that will encourage and stimulate every right-thinking man to do his duty. Then, there's Beattie. Henry Clay Beattie, of Richmond, of splendid family, a wealthy family, proved good character, though he didn't possess it, took his wife, the mother of a twelve-months'-old baby, out automobiling, and shot her; yet that man, looking at the blood in the automobile, joked, joked, joked! He was cool and calm, but he joked too much; and although the detectives were abused and maligned, and slush funds to save him from the gallows were used in his defense, a courageous jury, an honest jury, a Virginia jury, measured up to the requirements of the hour and sent him to his death, thus putting old Virginia and her citizenship on a high plane. And he never did confess, but left a note to be read after he was dead, saying that he was guilty. Crippen, of England, a doctor, a man of high standing, recognized ability and good reputation, killed his wife because of infatuation for another woman, and put her remains away where he thought as this man thought, that it would never be discovered; but murder will out, and he was discovered, and he was tried, and be it said to the glory of old England, he was executed.''

96. Movant further says that a new trial should be granted because of the following ground:

The solicitor-general, in his concluding argument, spoke to the jury as follows:

''But to crown it all, in this table which is now turned to the wall, you have Lemmie Quinn arriving, not on the minute, but to serve your purposes, from 12:20 to 12:22 (referring to a table which the defendant's counsel had exhibited to the jury giving, as was claimed by counsel, in chronological order, the happening of events as to defendant on April 26) but that, gentlemen, conflicts with the evidence of Freeman and the other young lady, who placed Quinn by their evidence, in the factory before this time.''

Whereupon the following occurred:

Mr. Arnold: There isn't a word of evidence to that effect; those ladies were there at 11:35 and left at 11:45, Corinthia Hall and Miss Freeman, they left there at 11:45, and it was after they had eaten lunch and about to pay their fare before they ever saw Quinn, at the little cafe, the Busy Bee. He says that they saw Quinn over at the factory before 12, as I understood it.''

Mr. Dorsey: Yes, sir, by his evidence.

Mr. Arnold: That's absolutely incorrect, they never saw Quinn there then, and never swore they did.

Mr. Dorsey (resuming): No, they didn't see him there; I doubt if anybody else saw him there, either.

Mr. Arnold: If a crowd of people here laughs every time we say anything how are we to hear the Court? He has made a whole lot of little misstatements, but I let those pass, but I am going to interrupt him on every substantial one he makes. He says those ladies saw Quinn,—says they say Quinn was there before 12, and I say he wasn't there, and they didn't say that he was there then.

The Court: What is it you say, Mr. Dorsey?

Mr. Dorsey: I was arguing to the jury the evidence.

The Court: Did you make a statement to that effect?

Mr. Dorsey: I made a statement that those two young ladies say they met Holloway as he left the factory at 11:05—I make the statement that as soon as they got back down to that Greek cafe, Quinn came in and said to them, "I have just been in and seen Mr. Frank."

Mr. Arnold: They never said that, they said they met Holloway at 11:45, they said at the Busy Bee Cafe, but they met Quinn at 12:30.

Mr. Dorsey: Well, get your record,—you can get a record on almost any phase, this busy Quinn was blowing hot and blowing cold, no man in God's world knows what he did say, but I got his affidavit there.

Mr. Arnold: I have found that evidence, now, Mr. Dorsey, about the time those ladies saw Quinn.

Mr. Dorsey: I'll admit he swore both ways.

Mr. Arnold: No, he didn't either. I read from the evidence of Miss Corinthia Hall: Then Mr. Dorsey asked her: "Then you say you saw Lemmie Quinn right at the Greek cafe at five minutes to twelve, something like that?" A. "No, sir, I don't remember what time it was when I saw him, we went into the cafe, ordered sandwiches and a cup of coffee, drank the coffee and when we were waiting on the change he came in." And further on, "All he said (Quinn) was he had been up and had seen Mr. Frank, that was all he said?" A. "Yes, sir," and so on. Now the evidence of Quinn: "What sort of clock was that?"—he's telling the time he was at DeFoor's pool parlor—"What sort of clock was that? A. Western Union clock. Q. What did the clock say when you looked at it? A. 12:30." And he also swore that he got back to the pencil factory at 12:20, that's in a half dozen different places.

The Court: Anything contrary to that record, Mr. Dorsey?

Mr. Dorsey: Yes, sir, I'm going to show it by their own table that didn't occur—that don't scare anybody and don't change the facts.

The Court erred, under the foregoing facts, in not restraining the solicitor-general from making the erroneous statements of fact objected to by defendant's counsel, which the evidence did not authorize, and in permitting him to proceed, and in not rebuking the solicitor-general, and in not stating to the jury that there was no such evidence as the solicitor-general had stated, in the case, and defendant says that for this improper argument, and for this failure of the Court, there should be granted a new trial.

97. Movant further says that a new trial should be granted because of the following:

In his concluding argument Solicitor-general Dorsey, referring to the defendant's wife, and referring to the claim made by the solicitor-general that the defendant's wife had not visited him for a certain time after he was first imprisoned, told the jury:

''Do you tell me that there lives a true wife, conscious of her husband's innocence, that wouldn't have gone through snap-shotters, reporters and everything else, to have seen him.''

Whereupon the following colloquy ensued:

Mr. Arnold: I must object to as unfair and outrageous an argument as that, that his wife didn't go there through any consciousness of guilt on his part. I have sat here and heard the unfairest argument I have ever heard, and I can't object to it, but I do object to his making any allusion to the failure of the wife to go and see him; it's unfair, it isn't the way to treat a man on trial for his life.

The Court: Is there any evidence to that effect?

Mr. Dorsey: Here is the statement I have read.

Mr. Arnold: I object to his drawing any conclusions from his wife going or not going, one way or the other—it's an outrage upon law and decency and fairness.

The Court: Whatever was in the evidence or the statement I must allow it.

Mr. Dorsey (resuming): Let the galled jade wince—

Mr. Arnold: I object to that, I'm not a ''galled jade,'' and I've got a right to object. I'm not galled at all, and that statement is entirely uncalled for.

The Court: He has got the right to interrupt you.

Mr. Dorsey: You've had your speech.

Mr. Rosser: And we never had any such dirty speech as that either.

Mr. Dorsey: I object to his remark, your Honor, I have a right to argue this case.

Mr. Rosser: I said that remark he made about Mr. Arnold, and your Honor said it was correct; I'm not criticising his speech, I don't care about that.

Mr. Dorsey (resuming): Frank said that his wife never went back there because she was afraid that the snap-shotters would get her picture,—because she didn't want to go through the line of snap-shotters. I tell you, gentlemen of the jury, that there never lived a woman, conscious of the rectitude and innocence of her husband, who wouldn't have gone to him through snap-shotters, reporters and advice of any Rabbi under the sun. And you know it.

Movant says that the Court erred in not taking positive action, under the circumstances aforesaid, and in not restraining the Solicitor-General from making his unfounded and unjust inferences from the alleged failure of the defendant's wife to visit him, which was not authorized by the evidence in the case, and erred in allowing the Solicitor-General to argue upon this subject at all, and erred in not admonishing the jury that such argument could not be considered and should have no weight with the jury, and the Court erred in not rebuking the Solicitor-General for making the reply which he made to the interruption, to the effect ''Let the galled jade wince,'' and erred in not rebuking the Solicitor-General for such unjust comments upon a merited interruption,—and because of such failures of the Court, and because of the aforesaid erroneous, unjust and unfounded arguments of the Solicitor-General, movant says that a new trial should be granted.

98. Movant says that a new trial should be granted because of the following:

The Solicitor-General, in his concluding argument to the jury, spoke as follows:

If there be a negro who accuses me of a crime of which I am innocent, I tell you, and you know it's true, I'm going to confront him, even before any attorney, no matter who he is, returns from Tallulah Falls, and if not then, I will tell you just as soon as that attorney does return, I'm going to see that that negro is brought into my presence, and permitted to set forth his accusations. You make much here of the fact that you didn't know what this man Conley was going to say when he got on the stand. You could have known it, but you dared not do it.

Whereupon the following colloquy ensued:

Mr. Rosser: May it please the Court, that's an untrue statement; at that time when he proposed to go through that dirty farce, with a dirty negro, with a crowd of policemen, confronting this man, he made his first statement, —his last statement he said, and these addendas, nobody ever dreamed of them, and Frank had no chance to meet them; that's the truth. You ought to tell the truth; if a man is involved for his life; that's the truth.

Mr. Dorsey (resuming): It don't make any difference about your addendas and you may get up there just as much as you want to, but I'm going to put it right up to this jury—

Mr. Rosser: May it please the Court, have I got the right to interrupt him when he mis-states the facts?

The Court: Whenever he goes outside of the record.

Mr. Rosser: Has he got the right to comment that I haven't exercised my reasonable rights?

The Court: No, sir, not if he has done that.

Mr. Rosser: Nobody has got a right to comment on the fact that I have made a reasonable objection.

Mr. Dorsey: But I'm inside of the record, and you know it, and the jury knows it. I said, may it please your Honor, that this man, Frank, declined to be confronted by this man Conley.

Mr. Rosser: That isn't what I objected to, he said that at that meeting that was proposed by Conley, as he says, but really proposed by the detectives, when I was out of the city, that if that had been met, I would have known Conley's statement, and that's not true; I would not have been any wiser about his statement than I was here the other day.

The Court: You can comment upon the fact that he refused to meet Frank or Frank refused to meet him, and at the time he did it, he was out of the city.

Mr. Arnold: We did object to that evidence, Your Honor, but Your Honor let that in.

The Court: I know; go on.

Mr. Dorsey (resuming) They see the force of it—

Mr. Rosser: Is that a fair comment, Your Honor, if I make a reasonable objection, to say that we see the force of it.

The Court: I don't think that, in reply to your objection, is a fair statement.

Mr. Dorsey (resuming): Now, may it please Your Honor, if they don't see the force of it, you do—

Mr. Rosser: I want to know, is Your Honor's ruling to be absolutely disregarded like that?

The Court: Mr. Dorsey, stay inside of the record, and quit commenting on what they say and do.

Mr. Dorsey: I am inside of the record, and Your Honor knows that's an entirely proper comment.

Mr. Rosser: Your Honor rules—he says one thing and then says your Honor knows better.

Mr. Dorsey: Your Honor knows I have got a right to comment on the conduct of this defendant.

The Court: Of course, you have, but when they get up and object, I don't think you have any right to comment on their objections as they are making them to the Court.

Mr. Dorsey: I don't?

The Court: No, I don't think so.

Mr. Dorsey: Isn't everything that occurs in the presence of the Court the subject matter for comment?

The Court: No, I don't think you can comment on these things. You can comment on any conduct within the province of this trial, but if he makes an objection that's sustained, why, then you can't comment on that.

Mr. Dorsey: Does your Honor say I'm outside of the record?

The Court: No, I don't, but I say this, you can comment on the fact that Frank refused to meet this man, if that's in the record, you have the right to do that.

Mr. Dorsey (resuming): This man Frank, with Anglo-Saxon blood in his veins, a graduate of Cornell, the superintendent of the pencil factory, so anxious to ferret out this murder that he 'phoned Schiff three times on Monday, April 28th, to employ the Pinkerton Detective Agency, this man of Anglo-Saxon blood and intelligence, refused to meet this ignorant negro, Jim Conley. He refused upon the flimsy pretext that his counsel was out of town but when his counsel returned, when he had the opportunity to know at least something of the accusations that Conley brought against this man, he dared not let him meet him.

Movant says that the Court erred in allowing the Solicitor-General to comment upon an alleged failure of the defendant to meet the witness, Conley and erred, when the defendant's counsel objected and interrupted him, the same not being authorized by the evidence, and erred in not stopping the Solicitor-General, and erred in not making a decisive and unequivocal ruling that such comment was improper, and should not influence the jury, and further erred in allowing the Solicitor-General to comment, as he did in the foregoing statement of facts, upon the interruption; and the Court expressly erred in ruling that the Solicitor-General could comment upon the fact that Frank refused to meet Conley; and because of such failures and errors on the Court's part, and because of such improper and prejudicial argument by the Solicitor-General, the movant says that a new trial should be granted him.

99. Movant further says that a new trial should be granted because of the following:

The Solicitor-General, in his concluding argument, referring to the visit of the defendant to Bloomfield's undertaking establishment, on April 27, made the following remarks to the jury:

Frank says that he visited the morgue not only once but twice. If he went down there and visited that morgue, and saw that child and identified her body, and it tore him all to pieces, as he tells you it did, let any honest man, I don't care who he be, on this jury, seek to fathom the mystery of this thing; tell me why it was, except for the answer I give you, he went down there to view that body again. Rogers says he didn't look at it; Black says he didn't see him look at it.

Whereupon the following occurred:

Mr. Rosser: He is mis-stating the evidence. Rogers never said he didn't look at the body, he said he was behind him, and didn't know whether he did or not; and Black says he didn't know whether he did or not.

Mr. Dorsey: Rogers said he never did look at that body.

Mr. Arnold: I insist that isn't the evidence. Rogers said he didn't know, and couldn't answer whether he saw it or not, and Black said the same thing.

Mr. Dorsey (resuming): I am not going to quibble with you. The truth is, and you know it, that when that man Frank went down there to look at that body of that poor girl, to identify her, that he never went in that room, and if he did look at her long enough to identify her, neither John Black nor Rogers nor Gheesling knew it. I tell you, gentlemen of the jury, that the truth of this thing is that Frank never looked at the body of that poor girl, but if he did, it was just a glance, as the electric light was flashed on and immediately turned and went into another room.

Mr. Rosser: There isn't a bit of proof that he went into another room, I object again, sir, there isn't a particle of proof of that.

The Court: Look it up and see what was said.

Mr. Dorsey: I know this evidence.

Mr. Rosser: If your Honor allows it to go on, there's no use looking it up. He never said anything about going into another room.

The Court: What is your remembrance about that.

Mr. Rosser: It isn't true, your Honor.

Mr. Dorsey: I challenge you to produce it.

Mr. Rosser: There's no use to challenge it, if he goes on and makes the argument they make, those deductions for which there's no basis, but when he makes a mis-statement of the evidence, it's perfectly useless to go on and look it up, and we decline to look it up.

Mr. Dorsey: I insist that they look it up. I insist that I am sticking to the facts.

Mr. Rosser: No, your are not.

The Court: Well, if you'll give me the record, I'll look it up. Mr. Haas, look that up, and see what is the fact about it.

Mr. Dorsey: I know what Boots Rogers said myself.

The Court: The jury knows what was said.

Mr. Dorsey: That's quibbling.

Mr. Arnold: Is that correct, your Honor?

The Court: No, that's not correct; whenever they object, Mr. Dorsey, if you don't agree upon any record, have it looked up, and if they are right and you know it, and you are wrong, or if they are wrong and you also know it, if they are wrong they are quibbling, and if they are right they are not quibbling. Now, just go on.

Mr. Rosser: Now, the question of whether Boots said he went into that room is now easily settled. (Mr. Rosser here read that portion of the cross examination of the witness Rogers, stating that when Frank left the door of the undertaking room, he went out of his view.)

Mr. Dorsey: Well, that's cross examination, ain't it?

Mr. Rosser: Yes, but I presume he would tell the truth on cross examination, I don't know; he passed out of his view, he didn't say he went into a room.

Mr. Dorsey: Correct me if I'm wrong. Boots Rogers said he didn't go where the corpse lay, and that's the proposition we lay down.

Mr. Rosser: That isn't the proposition either; now you made a statement that isn't true, the other statement isn't true. Rogers said that when he left "he went out of my view," he was practically out of his view all the time. I was just trying to quote the substance of that thing.

Mr. Dorsey (resuming): He wanted to get out of the view of any man who represented the majesty and dignity of the law, and he went in behind curtains or any old thing that would hide his countenance from these men. And he said on the leading examination—

Mr. Rosser: I don't know what you led out of him, but on the cross he told the truth.

Movant shows that under the foregoing facts, the Court erred in not making any ruling at all, and erred in allowing the Solicitor-General to proceed with his illegal argument, which was not founded on the evidence, and erred, and in not rebuking the Solicitor-General, and in not stating to the jury that the Solicitor-General had mis-stated the evidence in the particulars ojbected to, and erred in not telling the jury that there was no evidence in the case that Rogers had sworn that defendant did not look at the body of Mary Phagan, or that Frank went into another room; and because of the aforesaid errors in acting and failing to act, on the part of the Court, and because of such illegal and improper argument of the Solicitor-General, a new trial should be granted.

100. Movant further says that a new trial should be granted because of the following:

The Solicitor-General, in his concluding argument, spoke as follows to the jury, the subject under discussion being the whereabouts of the key to the elevator box on Sunday morning, April 27, the language of the Solicitor-General being as follows:

"Why don't they bring the fireman here who went around and gave such instructions? First, because it wasn't necessary, they could have cut the electricity off and locked the box. And second, they didn't bring him because no such man ever did any such thing, and old Holloway told the truth before he came to the conclusion that old Jim Conley was his nigger, and he saw the importance of the proposition that when Frank went there Sunday morning the box was unlocked and Frank had the key in his pocket."

Whereupon the following occurred:

Mr. Rosser: You say Mr. Frank had the key in his pocket? No one mentioned it, that isn't the evidence; I say it was hung up in the office, that's the undisputed evidence.

Mr. Dorsey: Holloway says when he got back Monday morning it was hung up in the office, but Boots Rogers said this man Frank—and he was sustained by other witnesses—when he came there to run that elevator Sunday morning, found that power box unlocked.

Mr. Rosser: That's not what you said.

Mr. Dorsey: Yes, it is.

Mr. Rosser: You said Frank had the key in his pocket next morning, and that isn't the evidence, there's not a line to that effect.

The Court: Do you still insist that he had it in his pocket?

Mr. Dorsey: I don't care anything about that; the point of the proposition, the gist of the proposition, the force of the proposition is that old Holloway stated, way back yonder in May, when I interviewed him, that the key was always in Frank's office; this man told you that the power box and the elevator was unlocked Sunday morning and the elevator started without anybody going and getting the key.

Mr. Rosser: That's not the point he was making; the point he was making, to show how clearly Frank must have been connected with it, he had the key in his pocket. He was willing to say that, when he ought to know that's not so.

The Court: He's drawing a deduction that he claims he's drawing.

Mr. Rosser: He doesn't claim that. He says the point is it was easily gotten in the office, but that's not what he said."

The Court: You claim that's a deduction you are drawing?

Mr. Dorsey: Why, sure.

The Court: Now, you don't claim the evidence shows that?

Mr. Dorsey: I claim that the power box was standing open Sunday morning.

The Court: Do you insist that the evidence shows he had it in his pocket?

Mr. Dorsey: I say that's my recollection, but I'm willing to waive it; but let them go to the record, and the record will sustain me on that point, just like it sustains me on the evidence of this man Rogers, which I'm now going to read.

Movant says that the Court erred in not rebuking the Solicitor-General for the foregoing improper argument which was not warranted by the evidence, and erred it not stating to the jury that there was no evidence that Frank had the key in his pocket, and in allowing the Solicitor-General to proceed unrebuked and uninterrupted with said illegal argument, and in not making a square and decisive ruling, upon the objection of the defendant, and in allowing the Solicitor-General to proceed with said claim that Frank had the key in his pocket, as a deduction, the same being totally unwarranted; and for said illegal and erroneous actions, and failures to act, by the Court, and for said illegal and improper argument, a new trial should be granted.

101. Movant says that a new trial should be granted, because of the following:

The Solicitor-General, in his concluding argument, in referring to the testimony of the physicians introduced by the defendant, spoke as follows:

"It wouldn't surprise me if these able, astute gentlemen, viligant as they have shown themselves to be, didn't go out and get some doctors who have been the family physicians and who are well known to some of the members of this jury, for the effect it might have upon you."

Whereupon the following colloquy occurred:

Mr. Arnold: There's not a word of evidence as to that, that's a grossly improper argument, and I move that that be withdrawn from the jury.

Mr. Dorsey: I don't state it as a fact, but I am suggesting it.

Mr. Arnold: He has got no right to deduct it or suggest it, I just want your Honor to reprove it, reprimand him and withdraw it from the jury; I just make the motion, and your Honor can do as you please.

Mr. Dorsey (resuming): I am going to show that there must have been something besides the training of these men, and I'm going to contrast them with our doctors.

Mr. Arnold: I move to exclude that as grossly improper. He says he's arguing that some physician was brought here because he was the physician of some member of the jury, it's grossly unfair and it's grossly improper and insulting even, to the jury.

Mr. Dorsey: I say it's eminently proper and absolutely a legitimate argument.

Mr. Arnold: I just record my objection, and if your Honor let's it stay in, you can do it.

Mr. Dorsey: Yes, sir; that wouldn't scare me, your Honor.

The Court: Well, I want to try it right, and I suppose you do. Is there anything to authorize that inference to be drawn?

Mr. Dorsey: Why, sure, why the fact that you went out and got general practitioners, that know nothing about the analysis of the stomach, know nothing about pathology.

The Court: Go on, then.

Mr. Dorsey: I thought so.

Mr. Arnold: Does your Honor hold that is proper, "I thought so?"

The Court: I hold that he can draw any inference legitimately from the testimony and argue it, I don't know whether or not there is anything to indicate that any of these physicians was the physicians of the family.

Mr. Rosser: Let me make the suggestion, your Honor ought to know that before you let him testify it.

The Court: He says he don't know it, he's merely arguing it from an inference he has drawn.

Mr. Dorsey (resuming): I can't see any other reason in God's world for going out and getting these practioners, who had never had any special training on stomach analysis, and who have not had any training with the analysis of tissues, like a pathologist has had, except upon that theory.

Movant shows that the Court erred is not rebuking the Solicitor-General for making such improper argument which was not authorized by the evidence, and in not stating to the jury that there was not a particle of evidence to the effect that any of the physicians were family physicians of any of the jurors, or that any of the physicians were put upon the stand for the effect it might have upon them for such reason; and the Court erred in allowing the Solicitor-General to proceed with such improper, unwarranted and highly prejudicial argument, and erred in allowing the Solicitor-General to comment, as the foregoing colloquy shows, upon the well-merited interruptions by defendant's counsel; and for such erroneous actions, and failures to act, by the Court, and for such illegal, unfounded and prejudical argument, the defendant says that a new trial should be granted.

102. Movant further says that a new trial should be granted because of the following:

The Solicitor-General, in his concluding argument, in referring to act of Judge Roan discharging the witness, Conley, from custody, stated:

"Judge Roan did it, no reflection on the Sheriff, but with the friends of this man, Frank, pouring in there at all hours of the night, offering him sandwiches and whiskey and threatening his life, things that this Sheriff, who is as good as the Chief of Police but no better, couldn't guard against because of the physical structure of the jail, Jim Conley asked, and His Honor granted the request, that he be remanded back into the custody of the honorable men who manage the police department of the City of Atlanta."

Whereupon the following occurred:

Mr. Rosser: No, that's a mistake, that isn't correct, your Honor discharged him from custody, he said that under that petition your Honor sent him back to the custody where you had him before, and that isn't true. Your Honor discharged him, vacated the order, that's what you did.

Mr. Dorsey: Here's an order committing him down there first—you are right about that, I'm glad you are right one time.

Mr. Rosser: That's more than you have ever been.

Mr. Dorsey (resuming): No matter what the outcome of the order may have been, the effect of the order passed by His Honor, Judge Roan, who presides in this case, was to remand him into the custody of the police of the City of Atlanta

Mr. Rosser: I dispute that, that isn't the effect of the order passed by his Honor, the effect of the order passed by his Honor was to turn him out, and they went through the farce by turning him out on the street and carrying him back. That isn't the effect of your Honor's judgment. In this sort of case, we ought to have the exact truth.

The Court: This is what I concede to be the effect of that ruling: I passed this order upon the motion of State's counsel, first, is my recollection, and by consent of Conley's attorney.

Mr. Rosser: I'm asking only for the effect of the last one.

The Court: On motion of State's counsel, consented to by Conley's attorney, I passed the first order, that's my recollection. Afterwards, it came up on motion of the Solicitor-General, I vacated both orders, committing him to the jail and also the order, don't you understand, transferring him; that left it as though I had never made an order, that's the effect of it.

Mr. Rosser: Then the effect was that there was no order out at all?

The Court: No order putting him anywhere?

Mr. Rosser: Which had the effect of putting him out?

The Court: Yes, that's the effect, that there was no order at all."

Mr. Dorsey (resuming): First, there was an order committing him to the common jail of Fulton county; second, he was turned over to the custody of the police of the city of Atlanta, by an order of Judge L. S. Roan; third, he was released from anybody's custody, and except for the determination of the police force of the City of Atlanta, he would have been a liberated man, when he stepped into this Court to swear, or he would have been spirited out of the State of Georgia, so his damaging evidence couldn't have been adduced against this man.

The Court erred in allowing the Solicitor-General to make the foregoing argument, over objection, which was not authorized by the evidence, and in not rebuking and correcting the Solicitor-General; and because of such failures to act, and erroneous actions, by the Court, and because of such improper and illegal argument, movant says a new trial should be granted.

103. Because the Court erred in failing to charge the jury, in reference to the witness, Jim Conley, that if the witness wilfully and knowingly swore falsely as to a material matter, his testimony ought to be disregarded entirely, unless corroborated by the circumstances, or the testimony of other unimpeached witnesses.

The Court erred in failing to charge the jury that, if they believed from the evidence, that Conley watched for Frank, and that his purpose in watching was to assist in the commission of the crime of sodomy by Frank upon the person of Mary Phagan, sodomy being a felony, that then, Conley as to any alleged murder committed in the progress of any such attempt to commit sodomy, would be an accomplice; and the jury could not give credit to his testimony, unless corroborated by the facts and circumstances, or by other witnesses.

ROSSER & BRANDON,
HERBERT J. HAAS,
REUBEN R. ARNOLD,
Movant's Attorneys.

EXHIBIT A.

Georgia, Dougherty County.

The State of Georgia } Indictment for Murder.
v. } In Superior Court Fulton County, Georgia.
Leo M. Frank. } Motion for New Trial.

Before me personally appeared R. L. Gremer, who being duly sworn deposes and says that he makes this affidavit to be used on the motion for new trial in the above case.

Further deposing he says that he is a resident of Albany, Ga., that he is acquainted with Mack Farkas, who works with Mr. Sam Farkas, who operates a livery stable and sale barn in Albany.

Further deposing, he says that between the time of the murder of Mary Phagan, and the trial of Leo M. Frank, the exact date this deponent can not state, deponent was standing in front of Mr. Sam Farkas's place of business on Broad Street in Albany, in the presence of Mack Farkas and others, including a party by the name of A. H. Henslee; said Henslee is the same party whose picture appears on page 2 of the Atlanta Georgian issue of August the 26th, and on page 2 of the issue of the same paper of August 23rd, as a juror in the Frank case.

At said time and place, deponent heard the said Henslee express his conviction that Frank was guilty of the murder of Mary Phagan; his exact language was "there can be no doubt that Frank is guilty. I know he is guilty," referring to the murder of Mary Phagan.

Further deposing he says, he stated to said Henslee "It is queer that a man of Frank's standing could be guilty of such a crime." Henslee said, "Without a doubt he is guilty." Deponent said "What do you mean by without a doubt?" Henslee said positively, "Without a doubt to my mind or to anyone else."

R. L. GREMER.

Sworn to and subscribed before me
Sept. 4th, 1913.
L. L. FORD,
Notary Public Dougherty County, Georgia.

EXHIBIT B.

Georgia, Dougherty County.

State of Georgia, } Indictment for Murder.
v. } In Superior Court Fulton County, Georgia.
Leo M. Frank. } Motion for New Trial.

Before me, personally appeared Mack Farkas, who being duly sworn makes this affidavit, to be used on the motion for a new trial in the above case.

Deposing, he says that he is a resident of Albany, Ga., and is connected with Sam Farkas, Esq., who runs a livery stable and sale barn in Albany; further deposing, he says that between the time of the murder of Mary Phagan, and the trial of Leo Frank, he heard a party discussing the case in front of the place of business of the said Sam Farkas, in Albany, Ga., in the presence of this deponent and others, including one R. L. Gremer, also a resident of Albany, Ga., said party, whom this deponent recollects as being named Henslee, and whose picture appears on page 2 of the Atlanta Georgian of August 23rd, and on page 2 of the Atlanta Georgian of August 26th, as being one of the

Frank jury, expressed himself as being convinced of Leo M. Frank's guilt of the murder of Mary Phagan; the exact language used by said party, deponent does not recollect, but his recollection is that he used the words "I believe Frank is guilty," referring to the murder of Mary Phagan.

MACK FARKAS.

Sworn to and subscribed before me
this September 4, 1913.
L. L. FORD,
Notary Public Dougherty County, Georgia.

EXHIBIT C.

Georgia, Fulton County.

State of Georgia,
vs.
Leo M. Frank.
} Fulton Superior Court.

Personally appears Julian A. Lehman, who being duly sworn makes this affidavit to be used on the motion for new trial in the above case.

Further deposing he says that he is personally acquainted with A. H. Henslee, one of the jurors in the above case; that on June 2, 1913, between Atlanta, Ga., and Experiment, Ga., the said Henslee expressed his opinion that Frank was guilty of the murder of Mary Phagan, and that this was in deponent's presence and hearing; and in the hearing of other persons on the train at the time; the words used to the best of deponent's knowledge and recollection were "Frank is as guilty as a damned dog, and ought to have his God damned neck broke"; this was in reference to Leo M. Frank, and before the trial.

Again, on June 20, 1913, the said Henslee made practically the same statement of and concerning the connection of Leo M. Frank with the murder of Mary Phagan in deponent's hearing.

On both occasions the said Henslee showed great feeling, he expressed the aforesaid conviction firmly and positively and vehemently.

JULIAN A. LEHMAN.

Sworn to and subscribed before me, this the
12th day of September, 1913.
ROBT. C. PATTERSON,
Notary Public Fulton County, Georgia.

EXHIBIT D.

State of Georgia, County of Fulton.

State of Georgia,
vs.
Leo M. Frank.
} In Fulton Superior Court.

Before me, the undersigned officer authorized by law to administer oaths, personally appeared Samuel Aron, who being first duly sworn, deposes and says on oath as follows:

Deponent says that just after the indictment of Leo M. Frank for murder, as near as he can recall about two days after the indictment, this deponent was at the Elks Club on Ellis Street, Atlanta, Georgia; that at that time he saw one A. H. Henslee, not then known to this deponent by name, but now known and recognized by this deponent as one of the jurors who tried the Frank case and returned a verdict of guilty; said A. H. Henslee was at said Elks Club at the time mentioned, and made the statement in this deponent's hearing: "I am glad they indicted the God dam Jew. They ought to take him out and lynch him. And if I get on that jury I'd hang that Jew sure." This statement was made in connection with the indictment of Leo M. Frank for the murder of Mary Phagan, and made in this deponent's hearing by the said A. H. Henslee, who afterwards served on said jury and brought in a verdict of guilty.

At this time this deponent left the Club, not caring to get into the argument, which was becoming heated and which was very condemnatory of Leo M. Frank by the said A. H. Henslee.

SAMUEL ARON.

Sworn to and subscribed before me
this 3rd day of October, A.D. 1913.
ROBT. C. PATTERSON,
Notary Public Fulton County, Georgia.

EXHIBIT E.

State of Georgia, County of Fulton.

State of Georgia,
vs. } Fulton Superior Court.
Leo M. Frank.

Before me personally appear L. Z. Rosser, Morris Brandon, R. R. Arnold, and H. J. Haas, who, being duly sworn, depose and say that they are the sole counsel of defendant in the above case, and they make this affidavit to be used as evidence on the motion for new trial in said case.

Further deposing, they say that, since the trial of said case and the verdict and sentence therein, it has come to their knowledge that two of the jurors who sat on said case, to-wit: M. Johenning and A. H. Henslee, were prejudiced, partial and biased against Leo M. Frank, the defendant, as evidenced by affidavits attached to motion and hereinafter referred to; that said prejudice, partiality and bias were present on their part, when said Johenning and Henslee qualified as jurors in said case as shown by said affidavits, but that the facts were unknown to these deponents at the time of the trial of said case, and at the time said jurors qualified on the voir dire of said case; and these deponents had no means of knowing said facts until after said trial.

Further deposing, they say that not until after the trial of said case did they know or have any means of knowing that said Johenning and Henslee, or either of them, had made any statement of any kind to, or in the presence of, any of the following persons, to-wit: H. C. Lovenhart, Mrs. J. G. Lovenhart, Miss Mariam Lovenhart, S. Aron, Mack Farkas, R. L. Gremer, Jno. M. Holmes, Shi Gray, S. M. Johnson, J. J. Nunnally, W. L. Ricker, J. A. Lehman, C. P. Stough, or any other person; of and concerning said Leo Frank in connection with the murder of Mary Phagan, or in connection with said trial, or the possible outcome of said trial.

Further deposing they say that they have been guilty of no laches in this matter, but that they have used every means of obtaining the facts in connection with statements made by said persons, and all of them, and all of said statements have come to their knowledge since the rendition of the verdict and sentence in said case, as is shown by the dates mentioned in the jurats to each affidavit, and deponents have brought same to the attention of the Court at the earliest possible moment at which the Court could take cognizance of said affidavits after the trial, which is the date on which the rule ni si is on return; that is, October 4, 1913, same being on that day presented to the Court as part of the motion for new trial.

Further deposing, deponents say that, had they known at the trial of any of the facts or statements of the jurors, which would disqualify, or tend to disqualify, said jurors, or either of them, when said jurors were put upon the voir dire in said case, these deponents would have brought the same to the attention of the Court at said time.

L. Z. ROSSER,
MORRIS BRANDON,
REUBEN R. ARNOLD
HERBERT J. HAAS.

Sworn to and subscribed before me,
by each of the above four-named
deponents, this October 22, 1913.
E. D. THOMAS,
Notary Public, Fulton County, Georgia.

EXHIBIT F.

Georgia, Fulton County.

State of Georgia,
vs. } Fulton Superior Court.
Leo M. Frank.

Personally appeared Mrs. Jennie G. Loevenhart, who makes this affidavit to be used on motion for a new trial in the above stated case.

Deposing on oath she says that she is personally acquainted with M. Johenning, one of the jurors who served in the trial of Leo M. Frank for the murder of Mary Phagan.

Further deposing she says that during May, 1913, said M. Johenning met deponent and deponent's daughter on Forsyth Street, Atlanta, Georgia, and then and there the said M. Johenning expressed to the deponent and deponent's daughter his firm belief that Leo M. Frank was guilty of the murder of Mary Phagan. This statement was made by M. Johenning forceably and positively as his profound conviction.

MRS. JENNIE G. LOEVENHART.

Sworn to and subscribed before me
this 26th day of September, 1913.
C. W. BURKE,
Notary Public, Fulton County, Georgia.

EXHIBIT G.

Georgia, Fulton County.

State of Georgia,
vs. } Fulton Superior Court.
Leo M. Frank.

Before me personally appeared H. C. Loevenhart, who makes this affidavit to be used on motion for a new trial in the above stated case.

Deposing on oath he says that for some eighteen months prior to July, 1913, he was connected with the Hodges Broom Works in the city of Atlanta;

that he is personally acquainted with M. Johenning, one of the jurors in the above stated case, and that during the month of May, 1913, said M. Johenning had a conversation with this deponent, in which he discussed the death of little Mary Phagan.

Further deposing he says that in said conversation the said juror, M. Johenning, expressed his opinion to deponent that Frank was guilty of the murder of Mary Phagan, and that it was his profound conviction.

H. C. LOEVENHART.

Sworn to and subscribed before me
this 2nd day of September, 1913.
C. W. BURKE,
Notary Public, Fulton County, Georgia.

EXHIBIT H.

Georgia, Fulton County.

State of Georgia,
vs.
Leo M. Frank.
} Fulton Superior Court.

Before me personally appeared Miss Miriam Loevenhart, who makes this affidavit to be used on motion for a new trial in the above stated case.

Deposing on oath she says that she is personally acquainted with M. Johenning, a juror, who served in the above stated case; she says that prior to the trial of Leo M. Frank, said juror, M. Johenning, had a conversation with this deponent and deponent's mother, and in their presence expressed his profound conviction that Leo M. Frank was certainly guilty of the murder of Mary Phagan.

Further deposing she says that said M. Johenning made this statement, positively, almost vehemently, and that his exact language, which was in response to a remark from this deponent in reference to the case was, as near as deponent recalls, "I know that he is guilty," referring to Leo Frank. Said M. Johenning made this statement more than once to this deponent before the commencement of the trial of Leo M. Frank for murder.

MIRIAM LOEVENHART.

Sworn to and subscribed before me
this 2d day of September, 1913.
C. W. BURKE,
Notary Public, Fulton County, Georgia.

EXHIBIT I.

Georgia, Fulton County.

State of Georgia,
vs.
Leo M. Frank.
} In Fulton Superior Court.
Conviction of Murder.
July Term, 1913. Motion for New Trial.

Personally came before the undersigned, Leo M. Frank, who upon oath says that he is the defendant in the above stated case, and that his sole counsel in said case were L. Z. Rosser, Morris Brandon, R. R. Arnold and H. J. Haas.

Affiant further says that at and before said trial was entered on, and during the whole of said trial that affiant had no knowledge whatsoever as to M. Johenning and A. H. Henslee, two of the jurors, being prejudiced, partial and biased in said case, as evidenced by the affidavits of H. C. Lovenhart, Mrs. J. C. Lovenhart, Miss Marian Lovenhart, S. Aron, Max Farkas, R. L. Grener, John W. Holmes, Shi Gray, S. M. Johnson, J. J. Nunnally, W. L. Ricker, J. A. Lehman, and C. P. Stough. Affiant did not know either of said jurors and had never seen or heard of them before.

Further deposing, affiant says that he did not know until after the trial, and did not have any means of knowing until after said trial, that said Johenning and said Henslee, or either of them, had made any statement of any kind to or in the presence of any of the persons hereinbefore named. Affiant further says that before said trial, at the time of entering upon said trial, and during said trial, he had no knowledge or means of knowing that said persons were prejudiced, partial or biased as is shown by the affidavits or depositions of the persons named, and the facts stated in said affidavits and depositions were unknown to this affiant until after the verdict and sentence in this case. He further says that he has been guilty of no laches in this matter, and has, together with his counsel, used all the means at hand to obtain the facts and circumstances in connection with the statements made by said parties and all of them. The said facts were discovered after the verdict and sentence of the court in the case above stated, and the affidavits of said witnesses were taken on the dates shown in the jurat to each affidavit, and the same are brought to the attention of the Court by being presented on the day for the return of the rule nisi, which is October 4th, 1913, and which is the earliest time at which such affidavits could be brought to the attention of the Court.

Affiant further says that had he known at the trial of any facts or statements which would disqualify, or tend to disqualify, said jurors, or either of them, when said juors were upon their voir dire in said case, that this affiant would have had his counsel bring the same to the attention of the Court promptly at that time.

LEO M. FRANK.

Sworn to and subscribed before me
this 3rd day of October, 1913.
SAML. H. BREWTON,
Notary Public, Fulton County, Georgia.

EXHIBIT J.

Georgia, Fulton County.

State of Georgia,
Versus
Leo M. Frank.
No....................
Fulton Superior Court.

Personally appeared W. P. Neill, who makes this affidavit to be used on a motion for new trial in the above stated case.

Deposing he says on oath that he was present in the court-room during the trial of Leo M. Frank for the murder of Mary Phagan, for two full days during the trial, and from time to time on other days; that at the time of the facts hereinafter stated, deponent was sitting just where the jury passed by going from the jury box to the rear end of the court-room, he was sitting on the front row of the spectators' benches.

During the course of the trial deponent saw the jury pass to the jury box from the rear of the court room, the jury passed immediately by this deponent and also by a man, whose name is unknown to this deponent, but who was a spectator in the court-room, who was sitting about three feet from this deponent, just across the aisle, no one being between this man and deponent; as the jury passed this man, at the time specified, this man took hold of one of the jurors, he took the juror by the hand with one hand and grasped his arm with the other hand and made a statement to him, said something to the juror which this deponent did not understand sufficiently to be able to quote, but this deponent says that he made some statement to the juror while he had him thus by the hand and arm.

Further deposing he says that this act was witnessed by Plennie Minor, so this deponent believes, for the reason that as soon as this happened, the said Plennie Minor immediately came back to this man and threatened to put him out of the court.

Plennie Minor told this man that he, Plennie Minor, saw him, the man, take the juror by the hand and say something to him; the man remonstrated with Plennie Minor, and this deponent heard Plennie Minor repeat to him that he, Plennie Minor, saw him, the man, speak to the juror.

Deponent further says that on two occasions, while he was sitting in the court-room, at the trial, at one time while he was about six to ten feet from the jury, this deponent heard shouts and cheering on the outside of the house from the crowds collected outside. One of said times was during Dorsey's speech.

While this deponent does not say whether or not the jury heard this cheering, he does say that he, the deponent, heard it, plainly and distinctly and was within a few feet of the jury at the time he heard it.

W. P. NEILL.

Sworn to and subscribed before me
this September 9, 1913.
VIRLYN B. MOORE,
Notary Public, Fulton County, Georgia.

Further deposing he says that on an occasion he heard cheering in the court-room; the Judge said that unless the cheering stopped he would have to clear the court-room; and to this, Deputy Sheriff Minor replied that that would be the only way he could stop the cheering in the court-room.

W. P. NEILL.

Sworn to and subscribed before me
this September 9, 1913.
VIRLYN B. MOORE,
Notary Public, Fulton County, Georgia.

EXHIBIT K.

Georgia, Fulton County.

The State of Georgia
vs.
Leo M. Frank.
} Fulton Superior Court.

Personally appeared before the undersigned, a Notary Public in and for said county, B. M. Kay, who on oath says that he is a resident of the city of Atlanta, living at No. 264 South Pryor Street. Deponent says further that on Saturday evening, August 23, 1913, about 8 or 8:30 o'clock, p. m., he was driving in his father's automobile down South Pryor Street, going south, there being in the automobile with him his mother, Mrs. Rose Kay, and his brother, Sampson Kay; that as the automobile approached the corner of South Pryor and East Fair Streets, he observed the jurymen in the Frank case turn into South Pryor from the east, out of East Fair Street, and deponent stopped his automobile to look at the jury, and upon doing so noticed that walking alongside the jury were some six or seven other men. Deponent was on the west side of South Pryor Street while the jury in the above entitled case was walking north along the east side of Pryor Street. Deponent's brother Sampson Kay got out of the automobile stating to deponent that he was going to follow the jury.

B. M. KAY.

Sworn to and subscribed before me
this 4th day of September, 1913.
ROBT. C. PATTERSON,
Notary Public, Fulton County, Georgia.

EXHIBIT L.

Georgia, Fulton County.

The State of Georgia
vs. } Fulton Superior Court.
Leo M. Frank.

Personally appeared before the undersigned, a Notary Public in and for said county, Miss Martha Kay, who on oath says that on the last day of the trial of Leo M. Frank in above stated case, August 25th, 1913, she was present in the court room and when the audience applauded Judge Roan stated to the sheriff that the cheering and demonstrations would have to stop or the court room would have to be cleared, to which the sheriff replied, "Your Honor, that is the only way it can be stopped."

MARTHA KAY.

Sworn to and subscribed before me
this 3d day of September, 1913.
ROBT. C. PATTERSON,
Notary Public, Fulton County, Georgia.

EXHIBIT M.

Georgia, Fulton County.

The State of Georgia
vs. } Fulton Superior Court.
Leo M. Frank.

Personally appeared before the undersigned, a Notary Public in and for said county Mrs. A. Shurman, who on oath says that on the last day of the trial of Leo M. Frank in above stated case, August 25th, 1913, she was present in the court room when the audience applauded. Judge Roan stated to the sheriff that the cheering and demonstrations would have to stop or the court room would have to be cleared, to which the sheriff replied "Your Honor, that is the only way it can be stopped."

MRS. A. SHURMAN.

Sworn to and subscribed before me
this 3d day of September, 1913.
ROBT. C. PATTERSON,
Notary Public, Fulton County, Georgia.

EXHIBIT N.

Georgia, Fulton County.

The State of Georgia
vs. } Fulton Superior Court.
Leo M. Frank.

Personally appeared before the undersigned, a Notary Public in and for said county, Mrs. A. Shurman, who on oath says that she is a resident of the city of Atlanta, living at No. 240 Central Avenue. Deponent says that on Monday morning, August 25th, 1913, the last day of the trial of the said Leo M. Frank, in the above stated cause, she was present in the court room in company with Miss Martha Kay, of No. 264 South Pryor Street, before time for court to open; that she saw the jury in said case enter said court room and take their places, and in a few moments Mr. Hugh M. Dorsey, the Solicitor-General of said court entered the room, just before he entered the room there was loud cheering in the street immediately outside the court house for "Dorsey," all of which was loud and long continued and plainly audible to any one in the court room; as Mr. Dorsey entered the court room there was also cheering in said court room. There was also applauding in the course of Mr. Dorsey's speech a couple of times on said date.

MRS. A. SHURMAN.

Sworn to and subscribed before me
this 3d day of September, 1913.
ROBT. C. PATTERSON,
Notary Public, Fulton County, Georgia.

EXHIBIT O.

Georgia, Fulton County.

The State of Georgia
vs. } Fulton Superior Court.
Leo M. Frank.

Personally appeared before the undersigned, a Notary Public in and for said county, Miss Martha Kay, who on oath says that she is a resident of the city of Atlanta, living at No. 264 South Pryor Street. Deponent says that on Monday morning, August 25th, 1913, the last day of the trial of the said Leo M. Frank in the above stated case, she was present in the court room in company with Mrs. A. Shurman of No. 240 Central Avenue, before time for court to open; that she saw the jury in said case enter said court room and take their places, and in a few moments Mr. Hugh M. Dorsey, the Solicitor-General of said court entered the room, just before he entered the room there was loud cheering in the street immediately outside the court house for "Dorsey," all of which was loud and long continued and plainly audible to anyone in the court room; as Mr. Dorsey entered the court room there was also cheering in said court room. There was also applauding in the course of Mr. Dorsey's speech a couple of times on said date.

MARTHA KAY.

Sworn to and subscribed before me
this 3d day of September, 1913.
ROBT. C. PATTERSON,
Notary Public, Fulton County, Georgia.

EXHIBIT P.

Georgia, Fulton County.

The State of Georgia vs. Leo M. Frank.	Fulton Superior Court.

Personally appeared before the undersigned a Notary Public in and for said county, Sampson Kay, who on oath says that he is a resident of the city of Atlanta, living at No. 264 South Pryor Street. Deponent further says that on Saturday evening, August 23rd, 1913, about 8 or 8:30 o'clock p. m. he saw the jury in the above entitled case walking along South Pryor Street with a deputy sheriff in front and another walking in the rear of said jury, said jury turning into South Pryor Street from East Fair Street, and thence up South Pryor Street to the Kimball House. Deponent followed the jury some 15 or 20 feet in the rear thereof, from E. Fair Street up South Pryor Street to near the corner of E. Mitchell and S. Pryor, when he passed ahead and waited on the corner of said streets until the jury had passed, and then continued to follow them up to the Kimball House. This deponent says that there were some six or seven men walking alongside the jurymen talking to them all the way from the corner of E. Fair and S. Pryor Streets, up to the Union Station just north of the corner of East Alabama and S. Pryor Street, when the men left them, and the jury went on and entered the Kimball House through the Wall Street entrance.

SAMPSON KAY.

Sworn to and subscribed before me
this 3d day of September, 1913.
ROBT. C. PATTERSON,
Notary Public, Fulton County, Georgia.

EXHIBIT Q.

State of Georgia, Fulton County.

The State of Georgia vs. Leo M. Frank.	Fulton Superior Court.

Personally appeared Samuel A. Boorstin, who, being duly sworn, on oath says: That on Friday evening, on the 22d day of August, 1913, at about 5 or 5:30 p. m., he was present at the court-room of Fulton Superior Court, Judge L. S. Roan, presiding, during the trial of the State versus Leo M. Frank; and, after adjournment, and when the jury had been taken from the court-room, and shortly thereafter, the Solicitor-General, Hugh M. Dorsey, had passed out of the court-room, there was a large crowd waiting outside, through which the jury passed, comprising, perhaps, no less than two or three thousand people; that this crowd did tumultuously and noisily applaud and cheer the Solicitor-General, and did congregate around the court-room on the outside, standing in great numbers, both on the street and on the sidewalks; that deponent, upon adjournment of court, was walking up Pryor Street from said court-room in a northerly direction, and when he reached Pryor and Alabama Streets, he saw two persons peering out of the third floor corner window in the Kimball House, looking in a southward direction at the large crowd congregated between the Kiser building and the court-house; that, as deponent continued walking northward and reached the restaurant in the

Union car shed, corner Pryor and Wall Streets, he still observed one of the figures in the jury-room peering southward, with both hands upon the window sill, whom he recognized as being Juror Smith, one of the jurors in the case of the State versus Leo M. Frank, then being on trial. The other person, who had his head through the window peering southward, had by this time stuck his head back into the room, and deponent could not tell who he was.

SAML. A. BOORSTIN.

Sworn to and subscribed before me
this 3d day of October, 1913.
J. H. LEAVITT,
Notary Public, Fulton County, Georgia.

EXHIBIT R.

Georgia, Fulton County:
State of Georgia,
vs.
Leo Frank.
} Superior Court of Fulton County
Charged with Murder.

Personally appeared before the undersigned officer, W. B. Cate, who being duly sworn deposes and says; That on September the 1st, 1913, in the afternoon, I was standing at the corner of Alabama Street and S. Pryor Street, and had intended to go down S. Pryor Street to the Court House where the Frank trial was being conducted but was unable to get any closer to the Court House on account of the crowd that had gathered in the street, I was in about one block of the Court House. While I was standing at this place I heard a great deal of cheering and shouting, the street being full of men most of whom were making noise and cheering. I saw some one come out of the court house, whom I understood was Hugh Dorsey the Solicitor, and he was picked up by some of the crowd and carried across the street on the shoulders of the men who had him. I could not see the man that was carried on the shoulders of the men very well but was told that it was Dorsey. There was at this time fully three thousand men gathered around the Court House, filling the streets on all sides of the court house. I only know Col. Dorsey by sight.

W. B. CATE.

Sworn and subscribed to before me
me this Sept. 16, 1913.
VIRLYN B. MOORE,
Notary Public, Fulton County, Ga.

EXHIBIT S.

Georgia, Fulton County.
State of Georgia
vs.
Leo M. Frank.
} In Fulton Superior Court.

Personally apeared J. H. G. Cochran, who being duly sworn deposes and says that he is a resident of Atlanta, Georgia, remembers the close of the trial of Leo M. Frank, and was present in front of the Court House in Atlanta, Georgia, on the day that the case closed and on the day that the jury returned the verdict of guilty in said case.

On the day aforesaid, to-wit:—that the jury returned the verdict, Mr. Cochran was standing in front of the Court House at the time the jury came out of the Court House to go to dinner; at just about the same time or near that time, and while the jury were in the vicinity of the Court House, Solicitor-General Hugh M. Dorsey came out of the Court House and went across the street to the Kiser building.

Deponent says that at the appearance of Solicitor Dorsey on the street coming from the Court House the crowd in the street, numbering between five hundred (500) and one thousand (1,000) people, to the best of this deponent's estimate, broke into loud and tumultuous cheering of the Solicitor, the jury being at the time near the Court House and proceeding up Pryor Street and being within sight of this Deponent at the time the cheering commenced, and that said cheering lasted the whole time that the Solicitor-General was crossing the street and until he had entered the Kiser building.

This Deponent knows that this cheering which took place in the presence of the jury, or in their hearing, and while they were on Pryor Street a short distance from the Court House, was cheering for the Solicitor, and he reremembers the Solicitor's stopping at the entrance of the Kiser Building and taking off his hat and bowing to the crowds who were cheering; not only were the crowds cheering him but people in the windows of the Kiser Building were also cheering and waving their hands and handkerchiefs at the Solicitor; all of which was practically in the presence of the jury, at least within their hearing, before they proceeded up Pryor Street. Further deposing he says that on said day the jury took dinner at the German Cafe, on South Pryor Street, a distance of approximately one hundred fifty (150) to two hundred (200) feet from the Kiser Building, and that both outside of the Cafe and in the Cafe, the cheering of the Solicitor-General could be heard by any person.

J. H. G. COCHRAN.

Sworn to and subscribed before me
this September 15th, 1913.
J. H. PORTER,
Notary Public, County of Fulton, State of Georgia

EXHIBIT T.

Georgia, Fulton County.
State of Georgia vs. Leo M. Frank. } In Fulton Superior Court.

Personally appeared H. G. Williams, resident of Atlanta, Georgia, who deposes and says that on the day the Frank trial closed, and verdict of guilty was found by the jury against Leo M. Frank, accused of the murder of Mary Phagan, this Deponent was on South Pryor Street in front of the Court House.

This Deponent saw Solicitor Dorsey come from the Court House and cross the street to the Kiser Building in the presence of exceeding five hundred (500) people, who cheered his appearance at the entrance of the Court House with loud and continued cheering, which cheering continued until he had entered the Kiser Building across the street, and which cheering was acknowledged by Solicitor Dorsey at the entrance of the Kiser Building where he turned and raised his hat to the people who were cheering him.

Just preceding Solicitor Dorsey, the jury had come out of the Court House and had gone a short way up the street to the German Cafe for lunch; at the time of this cheering, which could be heard for a great distance on all sides of the Court House, the jury were in easy hearing distance of the noise during the whole time when the crowd was cheering Solicitor Dorsey.

Said demonstration over the Solicitor-General occupied not less than three (3) minutes, and perhaps not exceeding five (5) minutes, and took place on the last day of the trial, immediately after the jury had come from the Court House on their awy to dinner. Further deposing, this Deponent says that practically the same demonstration took place on Saturday preceding the time herinbefore specified, at the time when Solicitor Dorsey came from the Court House to go to his office and when the jury were proceeding from the Court House; said demonstration on Saturday being in the presence of the Solicitor and in the hearing of the jury, and being a demonstration over the Solicitor General.

H. G. WILLIAMS.

Sworn to and subscribed before me
this September 15th, 1913.
ROBT. C. PATTERSON,
Notary Public, Fulton County, State of Georgia.

EXHIBIT U.

Georgia, Fulton County.

State of Georgia,
vs. } Fulton Superior Court.
Leo M. Frank.

Personally appeared before the undersigned a Notary Public in and for said county, E. G. Pursley, who on oath says that he is a resident of the City of Atlanta, residing at No. 50 Ponders Ave., with office at No. 700 Temple Court.

Deponent says that on Friday noon, before the above stated case went to the jury on Monday, he was present in the court room where the trial of Leo M. Frank was being held; that when court adjourned and the jury had left and gone to lunch he came out of the court house and there was loud cheering for ''Dorsey,'' which lasted for several minutes. Deponent walked from the Court House to his office on the seventh floor of the Temple Court Building, and when he reached his office some one asked deponent what all the racket or fuss was about down the street.

E. G. PURSLEY.

Sworn to and subscribed before me
this 13th day of September, 1913.
ROBT. C. PATTERSON,
Notary Public, Fulton Co., Ga.

EXHIBIT V.

State of Georgia,
vs.
Leo M. Frank.

Personally appeared Marano Benbenisty, who on oath says that he was standing outside of the court house on Friday afternoon, August 22nd, at about 12:20, and I saw the jury come out of the court room. Soon after the jury came out of the court room, Mr. Dorsey came out, and the crowd set up cheering and yelling "Hurrah for Dorsey." At the time of the yelling and cheering the jury was just crossing the street towards the Barbers' Supply Company, which is next to the Kiser Building. That in the opinion of the deponent there was about a thousand people crowding about the court room.

MARANO BENBENISTY.

Sworn to and subscribed before me
this 29th day of August, 1913.
C. A. STOKES,
Notary Public, Fulton County, Ga.

EXHIBIT W.

State of Georgia,
vs.
Leo M. Frank.

Personally appeared Isaac Hazan, who on oath says that he was standing outside of the court house on Friday afternoon, Aug. 22d, at about 12:20, and I saw the jury come out of the court room. Soon after the jury came out of the court room, Mr. Dorsey came out, and the crowd set up cheering and yelling "Hurrah," "Hurrah." At the time of the yelling and cheering the jury was just crossing the street towards the Barbers' Supply Company, which is next to the Kiser Building. That in the opinion of the deponent there was about a thousand people crowded about the court room.

Deponent further states that as the jury reached the other side of Pryor Street in front of the Barbers' Supply Company, deponent heard ten or fifteen men in front of the court house yelling toward the jury that unless they brought in a verdict of guilty, that they would kill the whole damn bunch; that in the opinion of your deponent, the jury must have heard them, because one of the jurors turned his face toward the yelling just when that occurred.

ISAAC J. HAZAN.

Sworn to and subscribed before me
this 29th day of August, 1913.
C. A. STOKES,
Notary Public, Fulton County, Ga.

EXHIBIT X.

Georgia, Fulton County.

Personally appeared John H. Shipp, who on oath says that on Friday, August 22, he was in room 301 of the Kiser Building, corner Hunter and So. Pryor Streets; that he saw the jury come out of the court house about six P. M.; that a few minutes after the jury came out of the court house, Mr. Dorsey appeared in the entrance, whereupon a great cheer arose from the people crowding in the streets and around the court house entrance; that at that time deponent saw the jury about fifty feet from the entrance of the court house, the jury at that time crossing diagonally toward the German Cafe; that in the opinion of deponent the yells and cheers could have been heard several blocks away; that the crowd yelled "Hurrah for Dorsey," and that the words were plainly audible.

Deponent further states that he was in room 301 of the Kiser Building, on Saturday, August 23; that he saw the jury emerge from the court house entrance at about one o'clock; that a few minutes after the jury came out, Mr. Dorsey came out and immediately a great crowd around the court house door set up a yell and cheer, saying "Hurrah for Dorsey," taking off their hats and throwing them in the air and otherwise exhibiting their enthusiasm; that at the time of the yelling, the jury was not in sight of deponent, but deponent is of the opinion that they were within easy hearing of the yelling and must have heard all that transpired.

Deponent further states that while he has been around the court house, during the progress of the trial, he has heard numerous threats of violence to the accused in case of an acquittal; that deponent knows that one of the persons making threats was armed, that he exhibited his weapon at time of making threat.

JOHN H. SHIPP.

Sworn to and subscribed before me
this 26th day of August, 1913.
C. A. STOKES,
Notary Public, Fulton County, Ga.

EXHIBIT Y.

The State of Georgia,
vs.
Leo M. Frank.

Personally appeared B. S. Lipshitz, who on oath says that he was out in front of the Court House, mingling with the crowd, at about one P. M. on Saturady, August 23, immediately after court adjourned; that deponent saw the jury come out and about one or two minutes thereafter, Mr. Dorsey came out, whereupon there was great cheering and yelling by the crowd; that at the time the yelling and cheering took place, the jury could not have been more than one minute's walk away from the court house, and in the opinion of deponent, they could have heard the cheering and yelling.

Deponent further states that he was also present at the court house on Friday evening, August 22nd, when Mr. Dorsey left the court house, and heard the cheering and heard the crowd yelling "Hurrah."

B. S. LIPSHITZ.

Sworn to and subscribed before me
this 26th day of August, 1913.
C. A. STOKES,
Notary Public, Fulton County, Ga.

EXHIBIT Z.

Georgia, Fulton County.

Personally appeared Charles J. Moore, who on oath says that he is an attorney at law, occupying room 301 on the third floor of the Kiser Building, at the corner of Hunter and So. Pryor Streets; that on Friday, August 22, deponent was in his office and saw the jury come out of the court house entrance at about six P. M.; that soon after Mr. Dorsey appeared in the court house entrance and a great cheering and yelling occurred by the crowd immediately opposite the entrance, and afterwards the crowd yelled "Hurrah for Dorsey," and the volume of the yells were so great that they could have been heard many blocks away; that they threw up their hats and gave other demonstrations; that at the time of the yelling the jury was just crossing the street toward the German Cafe, not fifty feet away from the entrance, and in the opinion of deponent must have heard the cheering and the words "Hurrah for Dorsey," because they could be plainly heard.

Deponent further states that he was in his office on Saturday, August 23, when the jury came out of the court house at about one o'clock, and he heard yelling and cheering when Mr. Dorsey appeared a few minutes afterwards. Deponent did not see the jury at the time of the yelling, but it occurred so soon after the jury came out of the court house that in the opinion of the deponent the jury must have heard the cheering and the words that were yelled.

X

Deponent further states that since the trial has been in progress he has heard several parties making threats of personal violence against the accused in the event of an acquittal; that these parties were loitering in and around the court house entrance and making threats that if the jury did not hang Frank; that they would pay the jury the compliment of sitting on the case and if the jury did not do its duty, they would; that deponent recalls the names of R. W. Milner, Richard Dutton; that Milner loitered continuously around the court house entrance and circulated among the crowd.

CHARLES J. MOORE.

Sworn to and subscribed before me
this 26th day of August, 1913.
C. A. STOKES,
Notary Public, Fulton County, Ga.

EXHIBIT AA.

Georgia, Fulton County.

Personally appeared D. Rosinky, who on oath deposes and states that on Friday, August 22, and Saturday, August 23, he was standing near the corner of Hunter and South Pryor Street, in the City of Atlanta, Georgia, and that when the Solicitor-General, H. M. Dorsey, came out of the old City Hall Building, now used as a court house, there was a loud and vociferous cheering by the assembled crowd; that members of the crowd took the Solicitor in their arms and carried him across the street to the Kiser Building.

D. ROSINKY.

Sworn to and subscribed before me
this 26th day of August, 1913.
LEONARD HAAS,
Notary Public, Fulton County, Ga.

EXHIBIT BB.

Georgia, Dougherty County.

State of Georgia,
vs.
Leo M. Frank.
} In the Superior Court of Fulton County, Georgia.

Before me personally appears Mack Farkas, who being duly sworn deposes and says that attached to this affidavit is a carbon copy of an order made by Sam Farkas, of Albany, Georgia, to Franklin Buggy Company, Incorporated, of Barnesville, Georgia.

Said order is marked Exhibit "A." Said order was taken by A. H. Henslee, a traveling salesman for said Franklin Buggy Company, in person; said order was taken on the date same bears date, to-wit: on July 8th, 1913.

This affidavit is made to be used on the motion for new trial in the above case. The name A. H. Henslee, on said order, is the handwriting and carbon copy of the signature of A. H. Henslee.

MACK FARKAS.

Sworn to and subscribed before me
this October 21st, A. D., 1913.
L. L. FORD,
Notary Public, Dougherty County, Georgia.

EXHIBIT BB—(Continued)

Georgia, Dougherty County.

State of Georgia,
vs.
Leo M. Frank.
} In the Superior Court of Fulton County, Georgia.

Before me personally appears B. W. Simon, who being duly sworn deposes and says that attached to this affidavit is a carbon copy of an order made by Sam Farkas, of Albany, Georgia, to Franklin Buggy Company, Incorporated, of Barnesville, Georgia.

Said order is marked Exhibit "A." Said order was taken by A. H. Henslee, a traveling salesman for said Franklin Buggy Company, in person; said order was taken on the date same bears date, to-wit: on July 8th, 1913.

This affidavit is made to be used on the motion for new trial in the above case. The name A. H. Henslee, on said order, is the handwriting and carbon copy of the signature of A. H. Henslee.

B. W. SIMON.

Sworn to and subscribed before me
this October 21st, A. D., 1913.
L. L. FORD,
Notary Public, Dougherty County, Georgia.

EXHIBIT BB—(Continued)

Georgia, Dougherty County.

State of Georgia,
vs.
Leo M. Frank.
} In the Superior Court of Fulton County, Georgia.

Before me personally appears Mack Farkas, who being duly sworn deposes and says that attached to this affidavit is a carbon copy of an order made by Sam Farkas, of Albany, Georgia, to Franklin Buggy Company, Incorporated, of Barnesville, Georgia.

Said order is marked Exhibit ''A.'' Said order was taken by A. H. Henslee, a traveling salesman for said Franklin Buggy Company, in person; said order was taken on the date same bears date, to-wit: on July 8th, 1913.

This affidavit is made to be used on the motion for new trial in the above case. The name A. H. Henslee, on said order, is the handwriting and carbon copy of the signature of A. H. Henslee.

SAM FARKAS.

Sworn to and subscribed before me
this October 21st, A. D., 1913.
L. L. FORD,
Notary Public, Dougherty County, Georgia.

EXHIBIT BB—(Continued)

FRANKLIN BUGGY COMPANY, INC.
Manufacturers of the
"Improved Barnesville Buggy"
Barnesville, Georgia
July 8, 1913.

When Ship—At Once
How Ship

Ship to—Sam Farkas
Albany, Ga.

		BODY		GEAR		Axle	WHEELS						
Quantity	Cat. No.	Width	Style	Spring	Color	Drop Arch	Tread	Height	Top	Trimmings	Stripe	Price Each	
1	44	20	R	Side	Bla	Arch	¾	38/42	R	R	R	62.50	Net
1	Set Rubbers for Job 44-V-⅞											15.00	
1	44	22	R	Side	Car	Arch	¾	38/42	R	R	R	62.50	
1	44	22	R	Side	Car	Arch	¾	38/42	R	R	R	62.50	Net
1	Set Rubbers for Job 44-V-⅞											15.00	
1	44	23	R	Side	Bla	Arch	¾	38/42	R	R	R	62.50	

TERMS: Oct. 1st, 2.50 per cent. discount if paid in 30 days from date of invoice; if not discounted in 30 days buyer agrees to give note to cover the account net 90 days, from date of invoice, note to be made payable to any banker in Georgia. All goods F. O. B. Barnesville, Ga. No freight allowance. All notes due after 90 days from invoice to bear interest at 8 per cent. per annum.

All orders subject to manufacturers' contingencies. This order not subject to countermand after 5 days. No agreement considered unless same be written in face of this order.

The title of goods delivered under this contract to remain in the name of the sellers until they shall have received money for same, and upon failure to make such payments the sellers shall repossess themselves and take away such goods. Should time be taken under the terms of settlement of this contract by buyer and he should become insolvent or in default, sellers shall have the right to declare the whole amount, including all paper given, to be due and collectible. The acceptance of the goods implies the acceptance of this condition. All orders entered as regular 5 ft. Track unless other Track is specified. All prices F. O. B. Barnesville, Ga.

Salesman—A. H. HENSLEE.

Signature—SAM FARKAS,
Pr B W Simon, B. K.

EXHIBIT CC.

Georgia, Walton County.

State of Georgia.
vs. } In the Superior Court of Fulton County, Georgia.
Leo M. Frank.

Before me, an officer authorized under the laws of Georgia to administer oaths, personally appear J. J. Nunnally and W. L. Ricker, of Monroe, Georgia, who, being duly sworn, depose and say on oath as follows:

That they have seen in the public prints that A. H. Henslee, one of the jurors in the Frank case, admits having made certain statements as to Frank's guilt of the murder of Mary Phagan, but says these statements were made after the trial of Leo M. Frank, and not before.

These deponents say that, so far as they know, the said Henslee has not been in Monroe, Georgia, since the trial of Leo M. Frank, and they reiterate the statement that all the statements made in their hearing by said Henslee, and testified about by these deponents on September 27th, 1913, were made before the commencement of the trial of Leo M. Frank for the murder of Mary Phagan on July 28th, 1913; to the best of these deponents' recollection, these statements were made in June, 1913, although as to the exact month these deponents say not.

J. J. NUNNALLY,
W. L. RICKER.

Sworn to and subscribed before me
this October 10, A. D. 1913.
J. B. SHELNUTT, Clerk.
Superior Court, Walton County, Georgia.

EXHIBIT DD.

Georgia, Fulton County.

State of Georgia.
vs. In the Superior Court of Fulton County, Georgia.
Leo M. Frank.

Before me personally appears Julian A. Lehman, who, being duly sworn, deposes and says on oath that he makes this affidavit for use in motion for new trial in above stated case.

Further deposing, he says on oath that he reiterates his statement heretofore made under oath that between the time of the murder of Mary Phagan, as reported by the newspapers, and the commencement of the trial of Leo M. Frank on July 28th, 1913, he, on two occasions, heard A. H. Henslee, a juror in said case, express himself firmly and positively as to the guilt of Leo M. Frank of the murder of Mary Phagan, in the language set forth in the affidavit heretofore made by this deponent and attached to the original motion for new trial in said case; one of said times was on or about June 20th, 1913, another time was early in the month of June, to the best of this deponent's recollection near June 2nd, but as to the exact date this deponent can not state.

JULIAN A. LEHMAN.

Sworn to and subscribed before me
this 13th day of October, A. D. 1913.
J. H. PORTER,
Notary Public, Fulton County, Ga.

TWELVE JURORS WITH WHOM LEO M. FRANK'S FATE RESTS

M. S. WOODWARD.
W. M. JEFFRIES.
M. JOHENNING.
F. E. WINBURN.
C. J. BOSSHARDT.
W. F. MEDCALF.

J. F. HIGDON.
A. L. WISBEY.
D. TOWNSEND.
F. V. L. SMITH.
A. H. HENSLEE.
J. T. OSBURN.

EXHIBIT EE.

Georgia, Fulton County.

State of Georgia.
vs. } In Fulton Superior Court.
Leo M. Frank.

Personally appeared Leon Harrison, who being duly sworn deposes and says that he makes this affidavit to be used on the motion for new trial in the above case.

Further deposing, he says that he is not acquainted with Leo. M. Frank, is not related to him, and has never seen him to know him; he says on oath that he is not personally acquainted with A. H. Henslee but he knows that said Henslee is the party about whom he makes this affidavit.

Further deposing, he says that during the month of May, 1913, deponent was walking from Scherrer's lunch place on Peachtree Street toward Five Points, when he was attracted by a conversation between two men, one of whom was said A. H. Henslee; the same Henslee that served on the Frank jury and whose picture appeared in the Atlanta Georgian of August 26th, 1913, page 2, a clipping of which paper is hereto attached.

At the time, which was shortly after the Mary Phagan murder, almost everyone was discussing the murder, and this deponent was very much interested in the matter, as was everyone else; this deponent heard the men with Henslee say to Henslee, "I don't believe Frank committed that murder; if he did, he is one Jew in a million; not one Jew in a million would commit such a crime;" and to this statement said Henslee replied in deponent's hearing: "I believe he did kill the girl, and if by any chance I get on the jury that tries him, I'll try my best to have him convicted."

The above statement of Henslee was in reference to Frank's guilt of the murder of Mary Phagan. LEON HARRISON.

Sworn to and subscribed before me
this 8th day of October, 1913.
ROBT. C. PATTERSON,
Notary Public, Fulton County, Ga.

EXHIBIT FF.

Georgia, Walton County.

State of Georgia.
vs. } In the Superior Court of Fulton County, Ga.
Leo M. Frank.

Before me, an officer authorized under the laws of Georgia to administer oaths, personally appears each of the undersigned persons, personally known to me; who, being duly sworn, depose and say on oath:

That they are personally acquainted with J. J. Nunnally and W. L. Ricker, and that said Nunnally and Ricker are each men of the highest personal and moral character and reputation, and that they are each entirely trustworthy, and worthy of belief, as to any statement made by them, or each of them.

R. C. KNIGHT,
Ex-Ordinary.
HAL G. NOWELL,
Solicitor City Court.
O. ROBERTS, Attorney.
J. B. SHELNUTT,
Clerk Walton Sup. Ct.
ALONZO C. STONE,
Judge City Ct. of Monroe.

Sworn to and subscribed before me
this October 10, 1913.
P. H. MICHAEL, J. P.,
Walton County, Ga.

EXHIBIT GG.

Georgia, Hancock County.

State of Georgia,
vs.
Leo. M. Frank.
} In the Superior Court of Fulton County, Ga.

Before me, an officer authorized under the laws of Georgia to administer oaths, personally appears each of the undersigned persons, personally known to me; who, being duly sworn, depose and say on oath:

That they are personally acquainted with Jno. M. Holmes, Shi Gray and S. M. Johnson; and that said Holmes, Gray and Johnson are each men of the highest personal and moral character and reputation, and that they are each entirely trustworthy, and worthy of belief, as to any statement made by them, or each of them.

T. B. HIGHTOWER,
Sheriff Han. Co., Ga.
W. H. BURWELL.
HENRY H. LITTLE,
Ordinary.
FRANK L. LITTLE,
Chairman Bd. of Education, Sparta.
T. M. HUNT.
H. D. CHAPMAN,
Tax Collector Han. Co.
THOS. F. FLEMING.
H. L. MIDDLEBROOKS,
Cashier First Nat. Bk.
G. W. RIVES,
Mayor of Sparta.
R. E. WHEELER,
Cashier Sparta Savings Bank.
D. E. WILEY,
Clerk Superior Court.
A. H. BIRDSONG,
Treasurer Hancock Co.
E. A. ROZIER,
V-Pres. Bank of Sparta.
J. D. BURNETT,
Csr. Bk. of Sparta.

Sworn to and subscribed before me
this October 8th, 1913.
J. D. LEWIS,
Notary Public Hancock County, Georgia.

EXHIBIT HH.

Georgia, Fulton County.

State of Georgia,
vs.
Leo. M. Frank. } In the Superior Court of Fulton County, Ga.

Before me, an officer authorized under the laws of Georgia to administer oaths, personally appears each of the undersigned persons, personally known to me, who, being duly sworn, depose and say on oath:

That they are personally acquainted with Julian A. Lehman; and that said Lehman is a man of the highest personal and moral character and reputation, and that he is entirely trustworthy, and worthy of belief, as to any statement made by him.

W. F. UPSHAW.
S. E. PRUMAN.
HENRY B. KENNEDY.

Sworn to and subscribed before me
this October 16th, A. D. 1913.
C. W. BURKE,
Notary Public Fulton County, Georgia.

EXHIBIT HH—Continued.

Georgia, Muscogee County.

State of Georgia,
vs.
Leo M. Frank. } In the Superior Court of Fulton County, Georgia.

Before me, an officer authorized under the laws of Georgia to administer oaths, personally appears each of the undersigned persons, personally known to me, who, being duly sworn, depose and say on oath:

That they are personally acquainted with Julian A. Lehman; and that said Lehman is a man of the highest personal and moral character and reputation, and that he is entirely trustworthy, and worthy of belief, as to any statement made by him.

C. W. MIZELL.
R. P. SPENCER, JR.

Sworn to and subscribed before me
this October 15th, A. D. 1913.
J. B. STEPHENS,
Notary Public Muscogee County, Georgia.

EXHIBIT II.

Georgia, Fulton County.

State of Georgia,
vs.
Leo. M. Frank. } In Fulton Superior Court.

Personally appeared the undersigned deponents who, being duly sworn, depose and say that they are personally acquainted with C. P. Stough, of Atlanta, Fulton County, Georgia, and that they know him to be a man of high personal character, entirely trustworthy, and absolutely worthy of belief as to any statement made by him, whether on oath or otherwise.

A. L. GUTHMAN.
L. P. STEPHENS.
A. H. VANDYKE.

Sworn to and subscribed before me
this 22d day of October, 1913.
C. W. BURKE,
Notary Public Fulton County, Georgia.

EXHIBIT JJ.

State of Georgia,
County of Muscogee.

Personally appeared before me, an officer duly authorized by law to administer oaths, the undersigned who, being sworn, deposes and says that he was head clerk at the New Albany Hotel (Albany Hotel Company, proprietors), located at Albany, in said state and county, all during the months of June, July and August, 1913, and for several years prior to that time; and that attached hereto, marked "Exhibit A," is the register of guests at said hotel from the 20th day of June, 1913, to the 31st day of August, 1913; and that there was no other register of guests used at said hotel during the period above stated.

And deponent says further that on the third page of said register of guests, under date of July 8th, 1913 (Contd 7/8/13), on the second line from the top, is the signature of A. H. Henslee, address "Atlanta, U. S. A., assigned to room 79 in said hotel; and deponent says further that he was the clerk on duty at said hotel at the time the said Henslee registered his said name on said register, and was a guest at said hotel during that day; and deponent says further that he is personally acquainted with the said Henslee.

And deponent says further that he is aware and has knowledge that this affidavit is to be used as evidence in the hearing of the motion for a new trial in the case of the State of Georgia versus Leo M. Frank, which is now pending in the superior court of Fulton County, Georgia.

W. M. LITTLE.

Sworn to and subscribed before me
this October 23rd, 1913.
H. K. GAMMON, J. P.,
Muscogee County, Ga.

EXHIBIT KK.

State of Georgia, Fulton County.

State of Georgia,
vs.
Leo. M. Frank.
} No......... Murder. Fulton Superior Court.

Personally appears Leo M. Frank, who on oath deposes and states that he is the defendant above named; that he did not know nor has he ever heard, until the end of his trial in the above stated case, that A. H. Henslee and Marcellus Johenning had any prejudice or bias against deponent nor that they or either of them had ever said or done anything indicating that they believed in deponent's guilt, or had any prejudice or bias against deponent.

LEO M. FRANK.

Sworn to and subscribed before me
this 24th of October, 1913.
J. O. KNIGHT,
Notary Public, Fulton County, Georgia.

EXHIBIT LL.

Georgia, Fulton County.

State of Georgia,
vs.
Leo. M. Frank.
} In the Superior Court of Fulton County, Georgia.

To the Honorable George L. Bell,
Judge of the Fulton Superior Court:

This application is presented to the Court by Leo M. Frank, the defendant in the above stated case, and shows to the Court the following facts:

The above stated case of the State of Georgia vs. Leo M. Frank, indictment for murder, has been tried, a verdict found, and this defendant sentenced; and a motion for a new trial in said case is now pending before Honorable L. S. Roan, Judge of the Stone Mountain Circuit, and hearing set for October 4, 1913.

It is shown to this Court that there is a certain party in the City of Atlanta, one C. P. Stough, whose affidavit is desired by this defendant to be used as evidence on the motion for new trial, and that said C. P. Stough refuses to give said affidavit; and it is desired to take testimony of said C. P. Stough under Section 5918 of the Code of 1910 of the State of Georgia.

Wherefore, the premises considered, this application is made for the purpose of having this Court name a Commissioner to take said testimony and for the purpose of having subpoenas issued as provided in said section of the Code, requiring said C. P. Stough to be and appear before said Commissioner at a date and place named, to answer certain questions to be propounded to him by Counsel for said defendant.

This September 29th, 1913.

R. R. ARNOLD,
L. Z. ROSSER,
Defendants' Attorneys.

The foregoing application read and considered. It is ordered that Sig Teitlebaum act as commissioner in said case, in accordance with Section 5918 of the Code of Georgia of 1910.

This September 29th, 1913.

GEO. L. BELL,
Judge of Superior Court,
Atlanta Circuit.

EXHIBIT LL—(Continued).

Georgia, Fulton County.

State of Georgia,
vs.
Leo. M. Frank.
} In Fulton Superior Court.

Written questions to be propounded to C. P. Stough, a witness for the defendant in the motion for new trial pending in said case, set for hearing October 4, 1913, before Judge L. S. Roan, Judge of the Stone Mountain Circuit.

1. Q. Do you know A. H. Henslee, who served on the jury in the above stated case at the trial commencing July 28, 1913?
   A. Yes.
2. Q. How long have you known him?
   A. About 6 or 7 years.

3. Q. During the time between the murder of Mary Phagan, as reported in the newspapers, to-wit: on April 26, 1913, and the commencement of the trial of the above case, what statements, if any, did you hear juror Henslee make in connection with Leo M. Frank, or as to who murdered Mary Phagan, or as to who was guilty of this murder; or as to how the trial of Leo M. Frank for this murder would terminate.

A. About the time that Conley was reported to have made a statement, I was coming into the city on a street car from the home of my daughter. Henslee was also on the car. I heard him say this, in reference to Leo M. Frank's guilt of the murder of Mary Phagan: "I think he is guilty and I would like to be in a position where I could help break his damned neck."

4. Q. How were these statements made?

A. This statement was most positive. He was as positive as I was, and I was as positive as I could be in what I said in the conversation.

5. Q. When and where was this?

A. On a College Park street car, coming into the city.

6. Q. What is your business?

A. Inspector for the Mason's Annuity.

C. P. STOUGH.

Georgia, Fulton County.

Personally appeareed C. P. Stough, who having been duly sworn made answer as above indicated and shown, to the foregoing written questions 1-6 inclusive; said answers executed, sworn to and subscribed before me this September 29th, 1913. SIG TEITLEBAUM,
Notary Public Fulton County, Georgia, and Commissioner to Take Testimony.

EXHIBIT MM.

Georgia, Hancock County.

State of Georgia,
vs. } In Superior Court of Fulton County, Georgia.
Leo M. Frank.

To the Honorable Clerk of the Superior Court of Hancock County, Ga.

This application shows the following facts:

Heretofore, a verdict of guilty was returned in said case, judgment was passed by the Court, and a motion for new trial was filed in said case, which said motion for new trial is set for hearing on October 4th, 1913, before Judge L. S. Roan, Judge of the Stone Mountain Circuit.

It is shown that there are three parties who reside in Sparta, Hancock County, Georgia, to-wit: John M. Holmes, Esq., Shi Gray, Esq., and S. M. Johnson, Esq., whose affidavits are desired by the movant as evidence on said motion; and further that all three of said parties have refused to give said affidavits.

Wherefore, this application is made to the Clerk, as provided by Sections 5918-19 of the Civil Code of 1910, State of Georgia, that subpoenas may be issued addressed to each of said parties, requiring them to be and appear before J. W. Lewis, Esq., a notary public of said Hancock County, Georgia, and answer under oath such written questions as are hereto annexed and such further written questions as may be propounded upon the hearing, in lieu of making said affidavit.

R. R. ARNOLD,
L. Z. ROSSER,
Attorneys for Leo. M. Frank, Movant.

EXHIBIT MM—(Continued).

Georgia, Hancock County.

State of Georgia,
vs.
Leo. M. Frank.
} In Superior Court of Fulton County, Georgia.

Questions to be propounded to Shi Gray, of Sparta, Hancock County, Georgia.

1. Q. Have you examined clipping from the Atlanta Georgian of August 26, 1913, hereto attached, showing a picture of the jury in the above-stated case, and showing a likeness of Juror A. H. Henslee?
A. Yes.

2. Q. Are you personally acquainted with A. H. Henslee?
A. Yes.

3. Q. Did you or not hear A. H. Henslee discussing the question of whether or not Leo M. Frank was guilty of the murder of Mary Phagan, between the death of said Mary Phagan and the commencement of the trial of Leo M. Frank charged with the murder of Mary Phagan?
A. Yes.

4. Q. To the best of your recollection what did he say in this conversation?
A. In a conversation in Walker & Holmes Insurance office, some one asked Henslee whether he, Henslee, thought Frank was guilty of the murder of Mary Phagan. Henslee answered in the affirmative. The answer given by Henslee was stated positively and firmly. The conversation lasted for about 20 minutes to half an hour. All of us were talking, Henslee and Mr. Holmes and Mr. Johnson, and others. The whole conversation at the time with Henslee was on the proposition as to whether or not Leo M. Frank was guilty of the murder of Mary Phagan.

5. Q. Where and when did this take place, and who else was present?
A. It was before the trial of Frank, and it was in the insurance office of Walker & Holmes.

6. Q. Did you not hear A. H. Henslee state, in Sparta, Ga., between the time of the death of Mary Phagan and the commencement of the trial of Leo M. Frank for the murder of Mary Phagan, that Leo M. Frank was guilty of the murder of Mary Phagan?
A. Yes.

7. Q. Did you not hear A. H. Henslee say that he believed Leo M. Frank was guilty of the murder of Mary Phagan, and further that he would bet one dollar or other sum, or would like to bet one dollar or other sum, that he, the said A. H. Henslee, would be put on the jury to try Leo M. Frank for the murder of Mary Phagan?
A. I heard him say he was summoned as a juror in the same conversation already testified about.

8. Q. State in full what is your business occupation, or if more than one, what are your business occupations?
A. I am a dealer in live stock.

H. SHI GRAY.

Georgia, Hancock County.

Before me personally appeared H. Shi Gray, who being first duly sworn true answers to make to the above and foregoing written questions, answered same as above set forth; said answers executed, sworn to, and subscribed before me this September 26, 1913.

J. W. LEWIS,
Notary Public, Hancock County, Georgia.

EXHIBIT MM—(Continued).

Georgia, Hancock County.

State of Georgia,
vs.
Leo. M. Frank.
} In Superior Court of Fulton County, Georgia.

Questions to be propounded to T. M. Johnson, of Sparta, Hancock County, Georgia.

1. Q. Have you examined clipping from the Atlanta Georgian of August 26, 1913, hereto attached, showing a picture of the jury in the above-stated case, and showing a likeness of Juror A. H. Henslee?
   A. Yes.
2. Q. Are you personally acquainted with A. H. Henslee?
   A. I know him by sight.
3. Q. Did you or not hear A. H. Henslee discussing the question of whether or not Leo M. Frank was guilty of the murder of Mary Phagan, between the death of said Mary Phagan and the commencement of the trial of Leo M. Frank charged with the murder of Mary Phagan?
   A. Yes.
4. Q. To the best of your recollection what did he say in this conversation?
   A. Several parties were talking. Some said they thought Leo M. Frank was guilty of the murder of Mary Phagan, others said they did not. Henslee stated his conviction that Frank was guilty of the murder of Mary Phagan. He did this firmly and positively.
5. Q. Where and when did this take place, and who else was present?
   A. Walker & Holmes office, about the last of June, 1913.
6. Q. Did you not hear A. H. Henslee state, in Sparta, Ga., between the time of the death of Mary Phagan and the commencement of the trial of Leo M. Frank for the murder of Mary Phagan, that Leo M. Frank was guilty of the murder of Mary Phagan?
   A. Yes.
7. Q. Did you not hear A. H. Henslee say that he believed Leo M. Frank was guilty of the murder of Mary Phagan, and further that he would bet one dollar or other sum, or would like to bet one dollar or other sum, that he, the said A. H. Henslee, would be put on the jury to try Leo M. Frank for the murder of Mary Phagan?
   A. He said he had been drawn as a juror and might have to serve.
8. Q. State in full what is your business occupation, or if more than one, what are your business occupations?
   A. Work for Walker & Holmes.

T. M. JOHNSON.

Georgia, Hancock County.

Before me personally appeared T. M. Johnson, who being first duly sworn true answers to make to the above and foregoing written questions, answered same as above set forth, said answers executed, sworn to and subscribed before me this September 26, 1913.

J. W. LEWIS,
Notary Public, Hancock County, Ga.

JURY THAT CONVICTED FRANK AS SLAYER OF MARY PHAGAN

J. T. OSBURN. A. H. HENSLEE. F. E. WINBURN. W. F. MEDCALF. A. L. WISBEY. W. M. JEFFRIES. M. JOHENNING.

DEPUTY HUBER. M. S. WOODWARD. F. V. L. SMITH. D. TOWNSEND. C. J. BOSSHARDT. J. F. HIGDON. DEPUTY LIDDELL.

EXHIBIT MM—(Continued).

Georgia, Hancock County.

State of Georgia,
vs.
Leo. M. Frank. } In Superior Court of Fulton County, Georgia.

Questions to be propounded to John M. Holmes, of Sparta, Hancock County, Georgia.

1. Q. Have you examined clipping from the Atlanta Georgian of August 26, 1913, hereto attached, showing a picture of the jury in the above-stated case, and showing a likeness of Juror A. H. Henslee?
   A. Yes.
2. Q. Are you personally acquainted with A. H. Henslee?
   A. Yes.
3. Q. Did you or not hear A. H. Henslee discussing the question of whether or not Leo M. Frank was guilty of the murder of Mary Phagan, between the death of said Mary Phagan and the commencement of the trial of Leo M. Frank charged with the murder of Mary Phagan?
   A. Yes.
4. Q. To the best of your recollection what did he say in this conversation?
   A. Several men were in my office. Mr. Henslee was asked the question whether or not he believed Leo M. Frank was guilty of the murder of Mary Phagan. He stated that he did. He stated this positively and firmly.
5. Q. Where and when did this take place, and who else was present?
   A. Walker & Holmes insurance office on the morning of June 27th, 1913.
6. Q. Did you not hear A. H. Henslee state, in Sparta, Ga., between the time of the death of Mary Phagan and the commencement of the trial of Leo M. Frank for the murder of Mary Phagan, that Leo M. Frank was guilty of the murder of Mary Phagan?
   A. Yes.
7. Q. Did you not hear A. H. Henslee say that he believed Leo M. Frank was guilty of the murder of Mary Phagan, and further that he would bet one dollar or other sum, or would like to bet one dollar or other sum, that he, the said A. H. Henslee, would be put on the jury to try Leo M. Frank for the murder of Mary Phagan?
   A. He stated that he had been summoned as a juror.
8. Q. State in full what is your business occupation, or if more than one, what are your business occupations?
   A. Member of the firm of Walker & Holmes, real estate and insurance.

JOHN M. HOLMES.

Georgia, Hancock County.

Before me personally appeared John M. Holmes, who being first duly sworn true answers to make to the above and foregoing written questions, answered same as above set forth; said answers executed, sworn to, and subscribed before me this September 26, 1913.

J. W. LEWIS,
Notary Public, Hancock County, Ga.

EXHIBIT NN.

Georgia, Fulton County.

State of Georgia,
vs. } In Superior Court of Fulton County.
Leo M. Frank.

To the Honorable Clerk of the Superior Court of Walton County, Ga.

This application shows the following facts:

Heretofore, a verdict of guilty was returned in said case, judgment was passed by the Court, and a motion for new trial was filed in said case, which said motion for new trial is set for hearing on October 4th, 1913, before Judge L. S. Roan, Judge of the Stone Mountain Circuit.

It is shown that there are three parties who reside in Monroe, Walton County, Georgia, to-wit: J. J. Nunnally, Esq., Virgil Harris, Esq., and W. L. Ricker, Esq., whose affidavits are desired by the movant as evidence on said motion and further that all three of said parties have refused to give said affidavits.

Wherefore, this application is made to the clerk, as provided by Sections 5918-19 of the Civil Code of 1910, State of Georgia, that subpoenas may be issued addressed to each of said parties, requiring them to be and appear before Orrin Roberts or Clifford Walker, notary publics of said Walton County, Ga., and answer under oath such written questions as are hereto annexed and such further written questions as may be propounded upon the hearing, in lieu of making said affidavit.

R. R. ARNOLD,
L. Z. ROSSER,
Attorneys for Leo M. Frank, Movant.

Georgia, Walton County.

State of Georgia,
vs. } In the Superior Court of Fulton County, Georgia.
Leo M. Frank.

Written questions to be propounded to J. J. Nunnally, Esq., W. L. Ricker, Esq., Virgil Harris, Esq., and ————, residence Monroe, Walton County, Georgia.

1. Q. Have you examined the attached clipping from the Atlanta Georgian of August 23, 1913, and particularly the likeness in said clipping of A. H. Henslee?
A. Yes, I have.

2. Q. Do you know A. H. Henslee?
A. I do.

3. Q. Do you recall whether or not A. H. Henslee was in Monroe, Georgia, between the time of the murder of Mary Phagan, as reported in the papers, and the time of the commencement of the trial of Leo M. Frank for the murder of Mary Phagan, to-wit, July 28, 1913?
A. He was.

4. Q. Did you hear A. H. Henslee make any statements in connection with the guilt of Leo M. Frank of the murder of Mary Phagan, and if so, what were those statements?
A. I did. He talked for some time in the store of Nunnally & Harris, and stated that Leo M. Frank was guilty of the murder of Mary

Phagan. He denounced Frank bitterly and vehemently and made this statement about Frank in my hearing: "They are going to break that Jew's neck." This was stated most bitterly and positively.

5. Q. Did you hear A. H. Henslee, in Monroe, Georgia, between said dates, make any statements as to what he believed about the guilt of Leo M. Frank of the murder of Mary Phagan; if so, what were those statements?

A. Yes, he said that Frank was guilty.

6. Q. Did A. H. Henslee, in Monroe, Georgia, between said dates, in your presence, and hearing, say he thought Leo M. Frank was guilty of the murder of Mary Phagan; if so, did he state it positively and firmly; how did he make the statement? Give his language as well as you recollect it; if you do not recollect his language, what was the tenor of it?

A. Yes; he was bitter.

7. Q. Did you hear A. H. Henslee, in Monroe, Georgia, between said dates, say anything about what the jury that tried Leo M. Frank for the murder of Mary Phagan would do if that jury did its duty; if so, what did he say, giving his language as nearly as you can recollect it, and if you can not recall the exact language, state the tenor and effect of said language.

8. Q. How long did A. H. Henslee discuss the guilt of Leo M. Frank in Monroe, Georgia, between said dates, and how many times did he repeat the statement that he thought Frank was guilty, in your hearing?

A. I was only present about 20 minutes. He was talking all the time I was there and stating that Frank was guilty of the murder of Mary Phagan.

9. Q. At the time you heard the statements above answered or referred to, who else was present and who else heard these statements, if you know?

A. J. J. Nunnally and some others whose names I do not now recall.

10. Q. State in full what is your business occupation, or occupations.

A. Dentist. Practicing about seven years. Am graduate of Atlanta Dental College.

W. L. RICKER.

Georgia, Walton County.

Before me personally appeared W. L. Ricker, who being first duly sworn true answers to make to the above and foregoing questions, answered same as above set forth; said answer executed, sworn to and subscribed before me this September 27, 1913.

CLIFFORD WALKER,
Notary Public, Walton County, Ga.

EXHIBIT NN—(Continued).

Georgia, Walton County.

State of Georgia,
vs.
Leo M. Frank.
} In the Superior Court of Fulton County, Georgia.

Written questions to be propounded to J. J. Nunnally, Esq., W. L. Ricker, Esq., Virgil Harris, Esq., and ——, residence Monroe, Walton County, Georgia.

1. Q. Have you examined the attached clipping from the Atlanta Georgian of August 23, 1913, and particularly the likeness in said clipping of A. H. Henslee?

A. Yes.

2. Q. Do you know A. H. Henslee?

A. Yes.

3. Q. Do you recall whether or not A. H. Henslee was in Monroe, Georgia, between the time of the murder of Mary Phagan, as reported in the papers, and the time of the commencement of the trial of Leo M. Frank for the murder of Mary Phagan: to-wit—July 28, 1913.

A. He was.

4. Q. Did you hear A. H. Henslee make any statements in connection with the guilt of Leo M. Frank of the murder of Mary Phagan, and if so, what were those statements?

A. What impressed me was that Henslee was the most vehement in his expressions as to the guilt of Leo M. Frank of the murder of Mary Phagan, of any person I had heard talk about it. The Phagan murder was, at the time, the particular topic of conversation generally; a great many people were discussing it, and many men denouncing Frank as guilty, particularly traveling men. Henslee was the most bitter of any. For about two and one-half hours in my place of business Henslee argued Frank's guilt in the murder case; in talking about the outcome of the case, he made the statement, which to the best of my recollection was, that if the jury should turn Frank out, he (Frank) would not get out of Atlanta alive.

5. Q. Did you hear A. H. Henslee, in Monroe, Georgia, between said dates, make any statements as to what he believed about the guilt of Leo M. Frank of the murder of Mary Phagan; if so, what were those statements?

A. Yes, he believed him guilty.

6. Q. Did A. H. Henslee, in Monroe, Georgia, between said dates, in your presence, and hearing, say he thought Leo M. Frank was guilty of the murder of Mary Phagan; if so, did he state it positively and firmly; how did he make the statement? Give his language as well as you recollect it; if you do not recollect his language, what was the tenor of it?

A. He was very vehement as stated; there was no doubt from what he said that it was his conviction that Frank was guilty.

7. Q. Did you hear A. H. Henslee, in Monroe, Georgia, between said dates, say anything about what the jury that tried Leo M. Frank for the murder of Mary Phagan would do if that jury did its duty; if so,

JURY THAT CONVICTED FRANK AS SLAYER OF MARY PHAGAN

J. T. OSBURN. A. H. HENSLEE. F. E. WINBURN. W. F. MEDCALF. A. L. WISBEY. W. M. JEFFRIES. M. JOHENNING.

DEPUTY HUBER. M. S. WOODWARD. F. V. L. SMITH. D. TOWNSEND. C. J. BOSSHARDT. J. F. HIGDON. DEPUTY LIDDELL.

what did he say, giving his language as nearly as you can recollect it, and if you can not recall the exact language, state the tenor and effect of said language.

A. I only recall that, to the best of my recolection, he said that if the jury did turn Frank aloose, Frank would never get away alive.

8. Q. How long did A. H. Henslee discuss the guilt of Leo M. Frank in Monroe, Georgia, between said dates, and how many times did he repeat the statement that he thought Frank was guilty, in your hearing?

A. About two and one-half hours, according to my recollection. He made the statements repeatedly; it might have been only two hours.

9. Q. At the time you heard the statements above answered or referred to, who else was present and who else heard these statements, if you know?

A. Dr. W. L. Ricker, and at times during the period there were others, but their names I don't recall. My partner, Mr. Harris, was out of the city.

10. Q. State in full what is your business occupation, or occupations.

A. A member of the firm of Nunnally & Harris, composed of J. J. Nunnally and Virgil Harris, dealers in buggies, wagons, and live stock. Also vice-president W. H. Nunnally Co., general supplies and merchandise.

J. J. NUNNALLY.

Georgia, Walton County.

Before me personally appeared J. J. Nunnally, who, being first duly sworn true answers to make to the above and foregoing written questions, answered same as above set forth; said answers executed, sworn to and subscribed before me this September 27, 1913.

CLIFFORD WALKER,
Notary Public, Walton County, Ga.

The recitals of fact contained in the original motion for new trial, and in the one hundred and three grounds of the foregoing amended motion for new trial (the same being all the grounds of said original and all the grounds of said amended motion) are hereby approved as true, and the Court has identified all the exhibits and they are made part of said motion for new trial.

October 31, 1913.

L. S. ROAN,
J. S. C., St. Mt. Ct.

After considering the above and foregoing motion and amended motion and affidavits submitted by the State the motion for a new trial is hereby overruled and denied.

This October 31, 1913.

L. S. ROAN,
Judge Superior Court, Stone Mountain Circuit, Presiding.

Recorded Writs M. G. page 796,
31st October, 1913.
JOHN H. JONES, Deputy Clerk.

CHARGE OF THE COURT.

State of Georgia, vs. Leo M. Frank.	Murder. Fulton Superior Court. Trial: July 28 to Aug. 21, 1913.

Gentlemen of the Jury:

This bill of indictment charges Leo M. Frank with the offense of murder. The charge is that Leo M. Frank, in this county, on the 26th day of April, of this year, with force and arms, did unlawfully and with malice aforethought kill and murder one Mary Phagan by then and there choking her, the said Mary Phagan, with a cord placed around her neck.

To this charge made by the bill of indictment found by the grand jury of this county recently empanelled Leo M. Frank, the defendant, files a plea of not guilty. The charge as made by the bill of indictment on the one hand and his plea of not guilty filed thereto form the issue, and you, gentlemen of the jury, have been selected, chosen and sworn to try the truth of this issue.

Leo M. Frank, the defendant, commences the trial with the presumption of innocence in his favor, and this presumption of innocence remains with him to shield him and protect him until the State shall overcome it and remove it by evidence offered to you, in your hearing and presence, sufficient in its strength and character to satisfy your minds beyond a reasonable doubt of his guilt of each and every material allegation made by the bill of indictment. I charge you, gentlemen, that all of the allegations of this indictment are material and it is necessary for the State to satisfy you of their truth by evidence that convinces your minds beyond a reasonable doubt of his guilt before you would be authorized to find a verdict of guilty. You are not compelled to find, from the evidence, his guilt beyond any doubt, but beyond a reasonable doubt, such a doubt as grows out of the evidence in the case, or for want of evidence, such a doubt as a reasonable and impartial mind would entertain about matters of the highest importance to himself after all reasonable efforts to ascertain the truth. This does not mean a fanciful doubt, one conjured up by the jury, but a reasonable doubt.

Gentlemen, this defendant is charged with murder. Murder is defined to be the unlawful killing of a human being, in the peace of the State, by a person of sound memory and discretion, with malice aforethought, either express or implied.

Express malice is that deliberate intention unlawfully to take away the life of a fellow-being, which is manifested by external circumstances capable of proof.

Malice shall be implied where no considerable provocation appears, and where all of the circumstances of the killing show an abandoned and malignant heart.

There is no difference between express and implied malice except in the mode of arriving at the fact of its existence. The legal sense of the term ''malice'' is not confined to particular animosity to the deceased, but extends to an evil design in general. The popular idea of malice in its sense of revenge, hatred, ill will, has nothing to do with the subject. It is an intent to kill a human being in a case where the law would neither justify nor in any degree excuse the intention, if the killing should take place as intended. It is a deliberate intent unlawfully to take human life, whether it springs from hatred, ill will or revenge, ambition, avarice or other like passion. A man may form the intent to kill, do the killing instantly, and regret the deed as soon as done. Malice must exist at the time of the killing. It need not have existed any length of time previously.

When a homicide is proven, if it is proven to be the act of the defendant, the law presumes malice, and unless the evidence should relieve the slayer he may be found guilty of murder. The presumption of innocence is removed by proof of the killing by the defendant. When the killing is shown to be the act of the defendant, it is then on the defendant to justify or mitigate the homicide. The proof to do that may come from either side, either from the evidence offered by the State to make out its case, or from the evidence offered by the defendant or the defendant's statement.

Gentlemen of the jury, you are made by law the sole judges of the credibility of the witnesses and the weight of the testimony of each and every witness. It is for you to take this testimony as you have heard it, in connection with the defendant's statement, and arrive at what you believe to be the truth.

Gentlemen, the object of all legal investigation is the discovery of truth. That is the reason of you being selected, empanelled and sworn in this case—to discover what is the truth on this issue formed on this bill of indictment. Is Leo M. Frank guilty? Are you satisfied of that beyond a reasonable doubt from the evidence in this case? Or is his plea of not guilty the truth? The rules of evidence are framed with a view to this prominent end—seeking always for pure sources and the highest evidence.

Direct evidence is that which immediately points to the question at issue. Indirect or circumstantial evidence is that which only tends to establish the issue by proof of various facts sustaining, by their consistency, the hypothesis claimed. To warrant a conviction on circumstantial evidence, the proven facts must not only be consistent with the hypothesis of guilt, but must exclude every other reasonable hypothesis save that of the guilt of the accused.

The defendant has introduced testimony as to his good character. On this subject, I charge you that evidence of good character when offered by the defendant in a criminal case is always relevant and material, and should be considered by the jury, along with all the other evidence introduced, as one of the facts of the case. It should be considered by the jury, not merely where the balance of the testimony in the case makes it doubtful whether the defendant is guilty or not, but also where such evidence of good character may of itself generate a doubt as to the defendant's guilt. Good character is a substantial fact, like any other fact tending to establish the defendant's innocence, and ought to be so regarded by the jury. Like all other facts proved in the case, it should be weighed and estimated by the jury, for it may render that doubtful which would otherwise be clear. However, if the guilt of the accused is plainly proved to the satisfaction of the jury beyond a reasonable doubt, notwithstanding the proof of good character, it is their duty to convict. But the jury may consider the good character of the defendant, whether the rest of the testimony leaves the question of his guilt doubtful or not, and if a consideration of the proof of his good character, considered along with the evidence, creates a reasonable doubt in the minds of the jury as to the defendant's guilt, then it would be the duty of the jury to give the defendant the benefit of the doubt thus raised by his good character, and to acquit him. (Stephens case, 81 Ga. 589).

The word "character" as used in this connection, means that general reputation which he bore among the people who knew him prior to the time of the death of Mary Phagan. Therefore, when the witnesses by which a defendant seeks to prove his good character are put upon the stand, and testify that his character is good, the effect of the testimony is to say that the people who knew him spoke well of him, and that his general reputation was otherwise good. When a defendant has put his character in issue, the State is allowed to attack it by proving that his general reputation is not good, or by showing that the witnesses who have stated that his character is good, have untruly reported it. Hence, the Solicitor-General has been allowed to cross-examine the witnesses for the defense who were introduced to testify to his good character. In the cross examination of these witnesses, he was allowed to ask them if they had not heard of various acts of misconduct on the defendant's part. The Solicitor-General had the right to ask any questions along this line he pleased, in order thoroughly to sift the witnesses, and to see if anything derogatory to the defendant's reputation could be proved by them. The Court now wishes to caution you that, although the Solicitor-General was allowed to ask the defendant's character witnesses these questions as to their having heard of various acts of alleged misconduct on the defendant's part, the jury is not to consider this as evidence that the defendant has been guilty of any such misconduct as may have been indicated in the questions of the Solicitor-General, or any of them, unless the alleged witnesses testify to it. Furthermore, where a man's character is put in evidence, and in the course of the investigation any specific act of misconduct is shown, this does not go before the jury for the purpose of showing affirmatively that his character is bad or that he is guilty of the offense with which he stands charged, but is to be considered by the jury only in determining the credibility and the degree of information possessed by those witnesses who have testified to his good character. (Henderson's case, 5 Ga. App. 495 (3)).

When the defendant has put his character in issue, the State is allowed to bring witnesses to prove that his general character is bad, and thereby to disprove the testimony of those who have stated that it is good. The jury is allowed to take this testimony, and have the right to consider it along with all the other evidence introduced on the subject of the general character of the defendant, and it is for the jury finally to determine from all the evidence whether his character was good or bad. But a defendant is not to be convicted of the crime with which he stands charged, even though, upon a consideration of all the evidence, as to his character, the jury believes that his character is bad, unless from all the other testimony in the case they believe he is guilty beyond a reasonable doubt.

You will, therefore, observe that this is the rule you will be guided by in determining the effect to be given to the evidence on the subject of the defendant's character: If, after considering all the evidence pro and con, on the subject of the defendant's character, you believe that prior to the time of Mary Phagan's death he bore a good reputation among those who knew him, that his general character was good, you will consider that as one of the facts in the case, and it may be sufficient to create a reasonable doubt of the defendant's guilt, if it so impress your minds and consciences, after considering it along with all the other evidence in the case; and if it does you should give the defendant the benefit of the doubt and acquit him. However, though you should believe his general character was good, still if, after giving due weight to it as one of the facts in the case, you believe from the evidence as a whole that he is guilty beyond a reasonable doubt, you would be authorized to convict him.

If you believe beyond a reasonable doubt from the evidence in this case that this defendant is guilty of murder, then you would be authorized in that event to say "We, the jury, find the defendant guilty." Should you go no further, gentlemen, and say nothing else in your verdict, the Court would have to sentence the defendant to the extreme penalty for murder, to-wit: to be hanged by the neck until he is dead. But should you see fit to do so, in the event you arrive at the conclusion and belief beyond a reasonable doubt from the evidence that this defendant is guilty, then, gentlemen, you would be authorized in that event, if you saw fit to do so, to say: "We, the jury, find the defendant guilty, and we recommend that he be imprisoned in the penitentiary for life." In the event you should make such a verdict as that, then the Court, under the law, would have to sentence the defendant to the penitentiary for life.

You have heard the defendant make his statement. He had the right to make it under the law. It is not made under oath and he is not subject to examination or cross-examination. It is with you as to how much of it you will believe, or how little of it. You may go to the extent, if you see fit, of believing it in preference to the sworn testimony in the case.

In the event, gentlemen, you have a reasonable doubt from the evidence, or the evidence and the statement together, or either as to the defendant's guilt as charged, then give the prisoner the benefit of that doubt, and acquit him; and in the event you do acquit him the form of your verdict would be: "We, the jury, find the defendant not guilty." As honest jurors do your utmost to reach the truth from the evidence and statement as you have heard it here, then let your verdict speak it.

Examined and approved as my charge in this case, Nov. 1, 1913.

(Signed) L. S. ROAN,
J. S. C., St. Mt. Ct.

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Exhibit J-AA

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